

**DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET**

Approved by OMB
0148-0046

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CHAPTER III—ECONOMIC DEVELOPMENT ADMINISTRATION, DEPARTMENT OF COMMERCE

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PART 300—GENERAL INFORMATION

Sec.

300.1 Introduction and purpose.

300.2 Definitions.

300.3 OMB control numbers.

300.4 Economic Development Administration—Washington, DC, Regional and Economic Development Representatives.

AUTHORITY: 42 U.S.C. 3211; Department of Commerce Organization Order 10-4.

SOURCE: 64 FR 5352, Feb. 3, 1999, unless otherwise noted.

§ 300.1 Introduction and purpose.

(a) *Introduction.* Is your community suffering from severe economic distress (e.g., high unemployment, low income, sudden economic changes, etc.)? Are you a representative of a State or local unit of government, Indian tribe, public or private nonprofit organization, educational institution, or community development corporation looking for grant assistance to enhance your opportunities for economic development? If so, these regulations of the Economic Development Administration (EDA) of the U.S. Department of Commerce may be of help. These regulations tell you the purpose of EDA and outline the program requirements, project selection process, project evaluation criteria, and other relevant matters. The information in these regulations covers grant programs of EDA that provide financial awards for the following:

- Public Works and Development Facilities;
- Planning;
- Research, Evaluation, Training and Technical Assistance;
- Trade Adjustment Assistance; and
- Economic Adjustment Assistance.

(b) What is the Purpose of the Economic Development Administration?

(1) Many communities lag behind and suffer economic distress in one form or another, such as:

- High unemployment;
- Low income;
- Underemployment;
- Outmigration;
- Sudden economic changes due to the restructuring or relocation of industrial firms;
- Closing or realignment of defense bases or cutbacks in defense procurement;

- Economic impact of natural disasters or other emergencies;
- Actions of the Federal government (such as environmental requirements) that curtail or remove economic activities; and
- Impacts of foreign trade.

(2) The purpose of the Economic Development Administration is to address economic problems affecting economically distressed rural and urban communities; by helping them:

(i) Develop and strengthen their economic development planning and institutional capacity to design and implement business outreach and development programs; and

(ii) Develop or expand public works and other facilities, financing tools, and resources that will create new job opportunities, save existing jobs, retain existing businesses, and support the development of new businesses.

(3) To promote a strong and growing economy throughout the United States, EDA works in partnership with State and local governments, Indian tribes and local, regional, and State public and private nonprofit organizations. With them EDA develops and carries out comprehensive economic development strategies that address the economic problems of distressed communities. EDA helps such communities increase their economic development capacities so that they can take advantage of existing resources and development opportunities.

§ 300.2 Definitions.

Unless otherwise defined in other parts or sections of this Chapter, the terms listed are defined as follows:

Comprehensive Economic Development Strategy, CEDS, or strategy means a strategy approved by EDA under § 301.3 of this chapter.

Department means the Department of Commerce.

Economic Development District or district:

(1) Means any area in the United States that has been designated by EDA as an Economic Development District under § 302.1 of these regulations; and

(2) Includes any Economic Development District designated by EDA under sec. 403 of the Public Works and Economic Development Act of 1965, as

amended, as in effect on the day before the effective date of Public Law 105–393.

EDA means the Economic Development Administration in the U.S. Department of Commerce when a place or agency is intended, and refers to the headquarters office in Washington, D.C., or a regional office, as appropriate; or it means the Assistant Secretary of Commerce for Economic Development or his/her designee when a person is intended. The locations of EDA's offices are listed each year in a Notice of Funding Availability (NOFA). The general information telephone number for EDA is (202) 482–2309.

Eligible applicant means:

- (1) In general,—
 - (i) An entity qualified to be an eligible recipient, or
 - (ii) Its authorized representative.
- (2) Except in the case of Research, Evaluation, Training, or Technical Assistance grants under part 307, a private individual or for-profit organization cannot be an eligible applicant.

Eligible recipient means

- (1) In general,—
 - (i) An area described in §301.2 of these regulations;
 - (ii) An Economic Development District;
 - (iii) An Indian tribe or a consortium of Indian tribes;
 - (iv) A State;
 - (v) A city or other political subdivision of a State or a consortium of political subdivisions;
 - (vi) An institution of higher education or a consortium of institutions of higher education; or
 - (vii) A public or private nonprofit organization or association acting in cooperation with officials of a political subdivision of a State.
- (2) In the case of Research, Evaluation, Training, and Technical Assistance grants under part 307, eligible recipient also includes private individuals and for-profit organizations.

Federal agency means a department, agency, or instrumentality of the United States.

Federally-declared disaster means a Presidentially-declared disaster or a Federally-declared disaster pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Public

Law 94–265) as amended by the Sustainable Fisheries Act (Public Law 104–297), or a Federal declaration pursuant to the Consolidated Farm and Rural Development Act, as amended (Public Laws 92–419, 96–438, 97–35, 98–258, 99–198, 100–233, 100–387, and 101–624), or a Federally-declared disaster pursuant to the Small Business Act, as amended (Public Law 85–536).

Financial assistance means grant.

Grant means the non-procurement award of EDA funds to an eligible recipient under PWEDA or the Trade Act, as applicable. The term includes a cooperative agreement, within the meaning of chapter 63 of title 31, United States Code.

Indian tribe means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native Village or Regional Corporation (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*)), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. The term includes: The governing body of a tribe, nonprofit Indian corporation (restricted to Indians), Indian authority, or other nonprofit tribal organization or entity, provided that the tribal organization or entity is wholly owned by, and established for the benefit of, the tribe or Alaska Native Village.

Local share, matching share or local share match are used interchangeably to mean non-Federal funds or goods and services provided by recipients or third parties that are required as a condition of a grant, and includes funds from other Federal agencies only if there is statutory authority allowing such use.

Notice of Funding Availability or *NOFA*, refers to the notice or notices EDA publishes each year in the FEDERAL REGISTER and on EDA's internet web site, <http://www.doc.gov/eda>, describing the available amounts, particular procedures, priorities, and special circumstances for the EDA grant programs for that year.

PWEDA means the Public Works and Economic Development Act of 1965, as amended (Pub. L. 89–136, 42 U.S.C. 3121 *et seq.*), including the comprehensive

amendments by the Economic Development Administration Reform Act of 1998 (Pub. L. 105-393). (The term “PWEDA” was used to refer to EDA’s authorizing legislation as it was in effect before the effective date of Public Law 105-393, signed into law on November 13, 1998. In these regulations, the term “PWEDA” refers to the legislation as currently amended by the 1998 law.)

Presidentially-declared disaster means a major disaster or emergency declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*).

Project means the activity or activities the purpose of which fulfills EDA program requirements and that EDA funds in whole or in part.

Proposed District means a geographic entity composed of one or more eligible areas proposed for designation as an Economic Development District.

Recipient and *grantee* are used interchangeably to mean an entity receiving funds from EDA under PWEDA or the Trade Act, as applicable, and includes any EDA approved successor to such recipient.

State means a State, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

The Trade Act means Title II, Chapters 3 and 5, of the Trade Act of 1974, as amended (19 U.S.C. 2341, *et seq.*).

United States means all of the States.

[64 FR 5352, Feb. 3, 1999, as amended at 64 FR 69873, Dec. 14, 1999]

§ 300.3 OMB control numbers.

(a) This table displays control numbers assigned to EDA’s information collection requirements by the Office of Management and Budget (“OMB”) pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. EDA intends that this table comply with Section 3507(f) of the Paperwork Reduction Act, requiring agencies to display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) Control number table:

13 CFR part or section where identified and described	Current OMB control no.
301	0610-0094.
302	0610-0094.
303	0610-0093.
304	0610-0094.
305	0610-0094 and 0610-0096.
306	0610-0094.
307	0610-0094.
308	0610-0094 and 0610-0095.
314	0610-0094.
315	0610-0094.
316	0610-0094.

§ 300.4 Economic Development Administration-Washington, D.C., Regional and Economic Development Representatives.

For addresses and phone numbers of the Economic Development Administration in Washington, D.C., Regional and Field Offices and Economic Development Representatives, refer to EDA’s annual Fiscal Year (FY) Notice of Funding Availability (NOFA).

PART 301—GENERAL ELIGIBILITY AND GRANT RATE REQUIREMENTS

Sec.

301.1 Applicants.

301.2 Area eligibility.

301.3 Strategy required.

301.4 Grant rates.

AUTHORITY: 42 U.S.C. 3211; Department of Commerce Organization Order 10-4.

SOURCE: 64 FR 5353, Feb. 3, 1999, unless otherwise noted.

§ 301.1 Applicants.

(a) Eligible applicants are defined in § 300.2 of this chapter.

(b) Except as otherwise provided in part 307 of this chapter, a public or private nonprofit organization applicant must include in its application for assistance, a resolution passed by, or a letter signed by, an authorized representative of a general purpose political subdivision of a State or an Indian tribe, acknowledging that the applicant is acting in cooperation with officials of the political subdivision or Indian tribe, as applicable.

[64 FR 5353, Feb. 3, 1999, as amended at 64 FR 69873, Dec. 14, 1999]

§ 301.2 Area eligibility.

(a) EDA awards public works and development facilities grants under part

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305 and economic adjustment grants under part 308 for projects to enhance economic development in economically distressed areas.

(b) An area is eligible for a project grant under part 305 or 308 if it has one of the following:

(1) An unemployment rate that is, for the most recent 24-month period for which data are available, at least one percent greater than the national average unemployment rate. For example, if the national average unemployment rate is 6 percent, an area is eligible under this provision if it has an unemployment rate of 7 percent.

(2) Per capita income that is, for the most recent period for which data are available, 80 percent or less of the national average per capita income.

(3) A special need, as determined by EDA, arising from actual or threatened severe unemployment or economic adjustment problems resulting from severe short-term or long-term changes in economic conditions, for example:

(i) Substantial outmigration or population loss;

(ii) Underemployment, that is, employment of workers at less than full time or at less skilled tasks than their training or abilities permit;

(iii) Military base closures or realignments, defense contractor reductions-in-force, or Department of Energy defense-related funding reductions;

(iv) Natural or other major disasters or emergencies;

(v) Extraordinary depletion of natural resources;

(vi) Closure or restructuring of industrial firms, essential to area economies; or

(vii) Destructive impacts of foreign trade.

(c) A non-distressed area [i.e., an area that does not meet the criteria of paragraph (b) of this section] within an Economic Development District is also eligible, provided the project will be of a substantial direct benefit to an area that meets at least one of the criteria of paragraph (b) of this section. A project provides substantial direct benefit if it provides significant employment opportunities for unemployed, underemployed or low income residents.

(d) Normally an area is defined by geographical/political boundaries, e.g., city, county, Indian reservation. However, a smaller area (without regard to political boundaries) is also eligible even though it may be part of a larger community that overall is experiencing low distress. When the boundaries of the project area differ from established political boundaries, the project area must be of sufficient size appropriate to the proposed project, and the applicant must justify the proposed boundaries in relation to the project's benefits to the area.

(e) Eligibility is determined at the time that EDA receives an application and is based on the most recent Federal data available for the area where the project will be located or where the substantial direct benefits will be received. If no Federal data are available to determine eligibility, an applicant must submit to EDA the most recent data available through the government of the State in which the area is located, i.e., conducted by or at the direction of the State government. Other data may be submitted, as appropriate, to substantiate eligibility based on special needs, under paragraph (b)(3) of this section.

(f) EDA may reject any documentation of eligibility that it determines is inaccurate.

(g) There is no area eligibility requirement for a project grant under part 306 or 307.

(h) EDA describes special needs criteria under paragraph (b)(3) of this section in a NOFA.

[64 FR 5353, Feb. 3, 1999, as amended at 64 FR 69873, Dec. 14, 1999]

§ 301.3 Strategy required.

(a) To be eligible for a project grant under part 305 or 308 of this chapter, the application for assistance must include a CEDS acceptable to EDA. The applicant may, however, incorporate by reference a current strategy previously approved by EDA, as an alternative to including the strategy in the application. (Exception: A strategy is not required when a funding request is for planning assistance, e.g., a strategy grant, under part 308 of this chapter.) The strategy must be in conformance

with CEDS requirements under § 303.3 of this chapter.

(b) EDA will approve as acceptable a strategy that it determines meets the requirements of § 303.3 of this chapter. The strategy may be one developed:

- (1) With EDA assistance,
- (2) Under another Federally supported program, or
- (3) Through a local, regional, or State process.

(c) In determining acceptability of a strategy, EDA will take into consideration the circumstances of the application, so that for instance a strategy accompanying an application for assistance immediately following a natural disaster will require less depth and detail than would be the case in other circumstances.

(d) To be acceptable, a strategy must be approved, within one year prior to the date of application, by the entity developing the strategy or by the applicant. In the case of a strategy approved by the applicant, approval must be by the applicant's governing body, or in the case of a State, by the governor or the governor's designee(s).

(e) Before EDA approves a strategy for an area all or partly within the boundaries of an EDD, the EDD organization must be given a 30-day opportunity to review and comment upon such strategy.

[64 FR 5353, Feb. 3, 1999, as amended at 64 FR 69873, Dec. 14, 1999]

§ 301.4 Grant rates.

(a) Except as otherwise provided for in this chapter, the amount of the EDA grant may not exceed 50 percent of the cost of the project. Cash or in-kind contributions, fairly evaluated by EDA, including contributions of space, equipment, and services, may provide the non-Federal share of the project cost. In-kind contributions must be eligible project costs and meet applicable Federal cost principles and uniform administrative requirements.

(b) EDA may supplement the Federal share of a grant project where the applicant is able to demonstrate that the non-Federal share that would otherwise be required cannot be provided because of the overall economic situation. It is not necessary for an applicant to prove that it would be impossible to provide a full 50 percent non-Federal share, but it must show circumstances warranting any reduction. In determining whether to provide a Federal share greater than 50 percent for a project, EDA will give due consideration to the applicant's economic situation and the relative needs of the area. In the case of Indian tribes, EDA may reduce or waive the non-Federal share, and in other cases EDA may reduce the non-Federal share of the cost of the project below 50 percent, in accordance with the following table, showing the maximum Federal grant rate, including the supplement:

Projects	Maximum grant rates (percentage)
(1) Projects of Indian tribes where EDA has made a determination to waive the non-Federal share of the cost of the project.	100
(2) Projects under Part 308 located in Presidentially-declared disaster areas for which EDA receives an application for assistance under a supplemental appropriation, within 18 months of the date of declaration, and for which the President established a rate of Federal participation, based on the public assistance grant rate of the Federal Emergency Management Agency (FEMA) for the disaster, of greater than 80 percent.	100
(3) Projects of Indian tribes where EDA has made a determination to reduce the non-Federal share of the cost of the project.	Less than 100
(4) Projects of States or political subdivisions of States that have exhausted their effective taxing and/or borrowing capacity, or nonprofit organizations that have exhausted their borrowing capacity.	Less than 100
(5) Projects under Part 308 located in Presidentially-declared disaster areas for which EDA receives an application for assistance under a supplemental appropriation, within 18 months of the date of declaration.	80
(6) Projects located in Federally-declared disaster areas, for which EDA receives an application for assistance within 18 months of the date of declaration, when the Assistant Secretary determines that the applicant cannot provide the required non-Federal share because of the disaster's impact on the economic situation.	80
(7) Projects located in eligible areas where:	
(i) The 24-month unemployment rate is at least 225% of the national average or	
(ii) The per capita income (PCI) is not more than 50% of the national average	80
(8) Projects located in eligible areas that are not eligible for a higher rate, where:	
(i) The 24-month unemployment rate is at least 180% of the national average or	
(ii) The PCI is not more than 60% of the national average	70

Projects	Maximum grant rates (percentage)
(9) Projects located in eligible areas that are not eligible for a higher rate, where:	
(1) The 24-month unemployment rate is at least 150% of the national average or	
(2) The PCI is not more than 70% of the national average	60
(10) Projects in all other eligible areas	50

(c) The table in paragraph (b) of this section does not apply to projects which support the on-going operations of Economic Development Districts or University Centers. Grant rates for those projects are provided in part 306 and subpart B of part 307, of this chapter, respectively.

(d) Projects located in designated Economic Development Districts are eligible for an amount of additional Federal grant assistance not to exceed 10 percent of the estimated cost of the project, provided

(1) The project applicant is actively participating in the economic development activities of the district;

(2) The project is consistent with the strategy of the district; and

(3) The non-Federal share of the project is not less than 20 percent.

(4) The project is not a University Center project under subpart B of part 307, of this chapter; and

(5) The district organization is not itself the sole project applicant. Projects (other than planning projects under part 306 of this chapter) for which the district organization is a co-applicant are eligible for the incentive if the co-applicant with the district is actively participating in the economic development activities of the district and the project is otherwise eligible for such incentive. Planning projects under part 306 of this chapter for which the district organization is an applicant or a co-applicant are not eligible for the 10 percent increase in assistance.

(e) EDA may make grants to supplement grants awarded in other Federal grant programs.

(1) Supplemental grants under paragraph (e) of this section are only available for projects:

(i) Under Federal grant programs that

(A) Provide assistance in the construction or equipping of public works,

public service, or development facilities, and

(B) Are designated by EDA as eligible for supplemental EDA grants, and

(ii) Are consistent with a strategy.

(2) EDA's funds combined with funds from another Federal grant program may be at the maximum EDA grant rate, as set forth above, even if the other Federal program has a lower grant rate. If the other Federal program has a grant rate higher than the maximum EDA grant rate as set forth above, the combination of funds may exceed the EDA rate provided the EDA share does not exceed the EDA rate.

(f) An applicant is eligible for the highest applicable maximum grant rate, as set forth above, in effect between the time EDA invites the application and the time the project is approved. The Federal share of a project receiving EDA grant assistance may be (and often is) less than the maximum grant rate for which the recipient is eligible.

(g) EDA's NOFA will provide additional criteria to ensure that the level of economic distress of an area, rather than a preference for a geographic area or a specific type of economic distress, is the primary factor in allocating assistance.

[64 FR 5353, Feb. 3, 1999, as amended at 64 FR 32975, June 18, 1999; 64 FR 69873, Dec. 14, 1999]

PART 302—ECONOMIC DEVELOPMENT DISTRICTS; STANDARDS FOR DESIGNATION, MODIFICATION AND TERMINATION

Sec.

302.1 Designation of Economic Development Districts.

302.2 Designation of nonfunded districts.

302.3 District organizations.

302.4 District organization functions and responsibilities.

302.5 Modification of district boundaries.

302.6 Termination and suspension of district designation.

302.7 Eligibility of non-distressed areas.

Economic Development Administration, Commerce

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AUTHORITY: 42 U.S.C. 3211; Department of Commerce Organization Order 10-4.

SOURCE: 64 FR 5355, Feb. 3, 1999, unless otherwise noted.

§ 302.1 Designation of Economic Development Districts.

EDA will designate a proposed district as an Economic Development District with the concurrence of the State or States in which the District will be wholly or partially located, when the proposed district meets the following requirements:

(a) It is of sufficient size or population, and contains sufficient resources, to foster economic development on a scale involving more than a single eligible area;

(b) It has an EDA approved strategy which:

(1) Contains a specific program for intra-district cooperation, self-help, and public investment;

(2) Is approved by each affected State;

(3) Identifies problems, and conditions underlying economic distress in the district; and

(4) Promotes economic development opportunities, plans for transportation access, enhancement and protection of the environment and balances resources through sound management of development;

(c) It contains at least one area, eligible for assistance under §301.2, that has been identified in an approved strategy;

(d) At least a majority of the counties, or other areas as determined by EDA, within the proposed district boundaries have submitted documentation of their commitment to support the economic development activities of the district;

(e) A district organization has been established in the proposed district which meets the requirements of §302.4; and

(f) The proposed district organization requests such designation.

§ 302.2 Designation of nonfunded districts.

The continuing designation of any Economic Development District is subject to the criteria and organization requirements of this part whether or not

the Economic Development District organization receives any EDA financial assistance.

§ 302.3 District organizations.

(a) The district shall be organized in one of the following ways:

(1) As a public organization through an intergovernmental agreement for the joint exercise of local government powers; or

(2) As a public organization established under State enabling legislation for the creation of multi-jurisdictional area wide planning organizations; or

(3) As a non-profit organization incorporated under the laws of the State in which it is located.

(b) Each district organization must meet EDA requirements concerning membership composition [§302.3(c)], the maintenance of adequate staff support to perform its economic development functions [§302.3(d)], and its authorities and responsibilities for carrying out economic development functions [§302.4]. Such requirements must also be met by the board of directors (or other governing body of the organization) as a whole.

(c) The district organization shall demonstrate that its governing body meets all of the following requirements:

(1) It is broadly representative of the principal economic interests of the district area including the interests of its minority and low-income populations;

(2) There is at least a simple majority of its membership who are elected officials and/or employees of a general purpose unit of local government who have been appointed to represent the government; and

(3) At least 20 percent of its membership who are private citizens, i.e., neither elected officials of a general purpose unit of local government nor employees of such a government who have been appointed to represent that government.

(d) The district organization shall be assisted by a professional staff drawn from qualified persons in economic development, planning or related disciplines. EDA may provide planning grants to Economic Development Districts to employ professional staff in

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accordance with part 306 of this chapter.

(e) The governing bodies of district organizations shall provide access for persons who are not members to make their views known concerning ongoing and proposed district activities in accordance with the following requirements:

(1) The economic development district organization must hold meetings open to the public at least once a year and shall also publish the date and agenda of the meeting enough in advance to allow the public a reasonable time to prepare to participate effectively.

(2) The district organization shall adopt a system of parliamentary procedures to assure that board members and others have access to and an effective opportunity to participate in the affairs of the district.

(3) Information should be provided sufficiently in advance of public decisions to give the public adequate opportunity to review and react to proposals. District organizations should seek to relate technical data and other material to the public so they may understand the impact of public programs, available options and alternative decisions.

§ 302.4 District organization functions and responsibilities.

(a) All Economic Development District organizations are responsible for seeing that the following are provided on a continuing basis, consistent with the requirements of § 302.3:

(1) Organizational actions, including:

(i) Arranging the legal form of organization which will be used;

(ii) Arranging for the membership of the governing body to meet § 302.3 requirements;

(iii) Recruiting staff to carry out the economic development functions;

(iv) Establishing a management system;

(v) The inclusion of private citizens who are not officials of or employees appointed by the officials of a general purpose unit of local government;

(vi) Contracting for services to carry out district functions;

(vii) Establishing and directing activities of economic development subcommittees; and

(viii) Submitting reports as determined by EDA to comply with civil rights requirements under part 317 of this chapter.

(2) Actions to develop and maintain the required district strategy, and any subsequent supplements or revisions, including:

(i) Preparing the analytic, strategic and implementation components of the strategy;

(ii) Adopting the strategy by formal action of the Economic Development District governing board;

(iii) Submitting the strategy, any supplements or revisions and annual reports for reviews by appropriate governmental bodies and interested organized groups, and attaching dissenting opinions and comments received; and

(iv) Submitting to EDA an approvable strategy.

(b) District organizations receiving EDA financial assistance for the development and implementation of Comprehensive Economic Development Strategies must also:

(1) Coordinate and implement economic development activities in the district, including:

(i) Assisting other eligible units within the district to apply for grant assistance for economic development purposes;

(ii) Carrying out economic development related research, planning, implementation and advisory functions as are necessary to the development and implementation of the strategy;

(2) Coordinate the development and implementation of the strategy with other local, State, Federal and private organizations (including minority organizations);

(3) Carry out the annual strategy for implementation; and

(4) Comply with the requirement of part 303.

[64 FR 5355, Feb. 3, 1999, as amended at 64 FR 69874, Dec. 14, 1999]

§ 302.5 Modification of district boundaries.

EDA, at the request of a district and with concurrence of the State or States affected (unless such concurrence is

waived by the Assistant Secretary), may modify the boundaries of a district, if it determines that such modification will contribute to a more effective program for economic development.

§ 302.6 Termination and suspension of district designation.

EDA may, upon 60 days prior written notice to the district organization, member counties or other areas as determined by EDA, and each affected State, terminate the designation status of an Economic Development District:

(a) When the district no longer meets the standards for designation as set forth above;

(b) When a district has not maintained a currently approved strategy in accordance with part 303 of this chapter; or

(c) When a district has requested termination.

[64 FR 5355, Feb. 3, 1999, as amended at 64 FR 69874, Dec. 14, 1999]

§ 302.7 Eligibility of non-distressed areas.

Areas in districts which are not themselves eligible for assistance under parts 305 or 308 may be eligible, as provided in § 301.2(c).

PART 303—PLANNING PROCESS AND STRATEGIES FOR DISTRICT AND OTHER PLANNING ORGANIZATIONS SUPPORTED BY EDA

Sec.

303.1 Definitions, purpose and scope.

303.2 Planning process.

303.3 Requirements for a strategy.

AUTHORITY: 42 U.S.C. 3211; Department of Commerce Organization Order 10-4.

SOURCE: 64 FR 5356, Feb. 3, 1999, unless otherwise noted.

§ 303.1 Definitions, purpose and scope.

(a) As used in this part 303. (1) *Planning organization* means an Economic Development District organization, Indian tribe, or other recipient of an EDA grant under part 306 of this chapter which grant is awarded in whole or in part to develop, update, or replace a CEDS, and

(2) *Strategy committee* means that committee or other entity identified by the planning organization as responsible for developing, updating, or replacing a strategy.

(b) This part describes the planning process of and requirements for strategies developed and implemented by planning organizations supported by EDA. Though the strategy requirements are the same under all EDA programs which call for a strategy, the planning process and reporting and updating requirements for EDA supported planning organizations are more stringent.

[64 FR 5356, Feb. 3, 1999, as amended at 64 FR 69874, Dec. 14, 1999]

§ 303.2 Planning process.

(a) The strategy committee must be inclusive and representative of the main economic interests of the area covered by the strategy. Such interests include public officials, community leaders, private individuals, business leaders, labor groups, minorities, and others who can contribute to and benefit from improved economic development in the area covered.

(b) The planning organization must support the strategy committee with a staff skilled in economic planning or related fields.

(c) The planning organization must conduct an initial and continuous study and analysis of the opportunities for economic development and of problems contributing to economic and related distress in the area covered, such as, for example, unemployment, underemployment, outmigration, or low per capita income, and possible solutions to such problems.

(d) Planning organizations covered by this part 303 must submit an initial strategy to EDA in compliance with the requirements of § 303.3, as determined by EDA. Each year thereafter, the planning organization must submit an annual strategy report, acceptable to EDA.

(e) A new or revised strategy is required at least every five years, or sooner if EDA or the planning organization determines that the strategy is inadequate due to changed circumstances. Each strategy must be available for review and comment by

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appropriate government bodies and interest groups in the area covered. Strategies submitted by Districts require a 30 day opportunity for review and comment by the Governor or Governors, or designee(s), of the State or States in which they are located, prior to EDA approval.

(f) If EDA identifies any deficiencies, it will notify the organization in writing and provide the organization a reasonable opportunity to remedy such deficiencies.

[64 FR 5356, Feb. 3, 1999, as amended at 64 FR 69874, Dec. 14, 1999]

§ 303.3 Requirements for a strategy.

A strategy must be the result of a continuing economic development planning process, developed with broad-based and diverse community participation, and contain the following:

(a) An analysis of economic and community development problems and opportunities including incorporation of any relevant material or suggestions from other government sponsored or supported plans;

(b) Background and history of the economic development situation of the area covered, with a discussion of the economy, including as appropriate, geography, population, labor force, resources, infrastructure, transportation systems, and the environment;

(c) A discussion of community participation in the planning efforts;

(d) A section setting forth goals and objectives for taking advantage of the opportunities of and solving the economic development problems of the area serviced;

(e) A plan of action, including suggested projects to implement objectives and goals set forth in the strategy; and

(f) Performance measures that will be used to evaluate whether and to what extent goals and objectives have been or are being met.

[64 FR 5356, Feb. 3, 1999, as amended at 64 FR 69874, Dec. 14, 1999]

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PART 304—GENERAL SELECTION PROCESS AND EVALUATION CRITERIA

Sec.

304.1 Project proposal, application, selection and evaluation for programs under PWEDA.

304.2 How EDA evaluates proposals and applications for projects funded under PWEDA.

AUTHORITY: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

SOURCE: 64 FR 5357, Feb. 3, 1999, unless otherwise noted.

§ 304.1 Project proposal, application, selection and evaluation for programs under PWEDA.

(a) *Local projects.* If you are or represent a party eligible to be an applicant, and are interested in a public works, economic adjustment, planning, local technical assistance or university center project grant, you should contact the appropriate Economic Development Representative (EDR) (or EDA Regional or headquarters office), identified in the NOFA. The EDR or other EDA official is available to provide program information, including the current published NOFA; provide a proposal form approved by the U.S. Office of Management and Budget (OMB), and provide assistance as needed in filling out the proposal form.

(1) After submission of the proposal to the appropriate EDR or Regional Office of EDA, the appropriate Regional Office Project Review Committee (PRC), consisting of at least three EDA officials, will review the proposal. The EDR or other appropriate EDA official will evaluate the proposal under § 304.2, program specific sections of this rule, and the NOFA, if applicable, before submitting it to the EDA Regional Office for its review.

(2) After review by the PRC, EDA will send a letter in a timely manner to each submitter advising either that:

(i) EDA invites the submitter to prepare and present a formal application on a standard application form, with attachments for the type of grant being requested; or

(ii) EDA returns the proposal because of specified deficiencies and suggests resubmission when the deficiencies are cured; or

(iii) EDA denies the proposal for specifically stated reasons.

(b) *National technical assistance, training, research, or evaluation projects.* If you are or represent a party eligible to be an applicant, and are interested in a national technical assistance, training, research, or evaluation project under PWEDA, you should make initial contact with EDA in Washington, D.C., at locations identified in the NOFA, for information and assistance concerning proposals and to obtain program information, including a copy of the current NOFA, and OMB approved proposal form. After submission of the proposal to the appropriate EDA Washington, D.C. office, generally, three or more technically knowledgeable EDA officials will review the proposal for relevance and quality.

(1) If EDA determines that the proposal is acceptable under §304.2, program specific sections of this chapter, and the NOFA, if applicable, EDA may by letter invite the submitter to provide an application with a more detailed and comprehensive project narrative.

(2) If EDA determines that the proposal is not acceptable because of specified deficiencies, EDA will so notify the submitter in writing in a timely manner.

(c) Additional criteria, or priority consideration factors for assistance, may be set forth in a NOFA.

(d) EDA expects that applications will generally be submitted within 30 days after receipt of an invitation letter. EDA's invitation to submit an application does not assure EDA funding.

[64 FR 5357, Feb. 3, 1999, as amended at 64 FR 69874, Dec. 14, 1999]

§304.2 How EDA evaluates proposals and applications for projects funded under PWEDA.

(a) General proposal and application evaluation criteria for projects funded under PWEDA are as follows: EDA will screen all proposals/applications for conformance to statutory and regulatory requirements, the reasonable-

ness of the budget presented, and the following criteria:

(1) The relative severity of the economic problem of the area,

(2) The quality of the scope of work proposed to address the problem,

(3) The merits of the activity(ies) for which funding is requested, and

(4) The ability of the prospective applicant to carry out the proposed activity(ies) successfully.

(b) EDA will also review applications for conformance with any additional program specific evaluation criteria as stated in applicable sections of these rules or the NOFA.

(c) The NOFA may identify special areas of interest or priority consideration for the period of such NOFA.

[64 FR 5357, Feb. 3, 1999, as amended at 64 FR 69875, Dec. 14, 1999]

PART 305—GRANTS FOR PUBLIC WORKS AND DEVELOPMENT FACILITIES

Subpart A—General

Sec.

305.1 Purpose and scope.

305.2 Criteria.

305.3 Application requirements.

305.4 Selection and evaluation.

Subpart B—Other Requirements

305.5 Pilot program.

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305.7 Selection of the Architect/Engineer.

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305.12 Advertising for bids.

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305.20 Project development time schedule.

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305.22 Services performed by the recipient's own forces.

305.23 Public Works projects for design and engineering work.

305.24 Disbursements of funds for grants.

305.25 Final inspection.

305.26 Reports.

AUTHORITY: 42 U.S.C. 3211; Department of Commerce Organization Order 10-4.

§ 305.1

SOURCE: 64 FR 5358, Feb. 3, 1999, unless otherwise noted.

Subpart A—General

§ 305.1 Purpose and scope.

The purpose of Public Works and Development Facilities grants is to help the Nation's distressed communities revitalize and expand their physical and economic infrastructure and thereby provide support for the creation or retention of jobs for area residents by helping eligible recipients with their efforts to promote the economic development of distressed areas. The primary focus is on the creation of new, or the retention of existing, long-term private sector job opportunities in communities experiencing significant economic distress as evidenced by high unemployment, low income, or a special need arising from actual or threatened severe unemployment or severe changes in local economic conditions. These grants are intended to help communities achieve sustainable economic development by developing and expanding new and existing public works and other infrastructure facilities that will help generate long-term jobs and economic growth, improve economic conditions or otherwise enhance and promote the economic recovery of the area.

§ 305.2 Criteria.

(a) A grant may be made under part 305 for the following purposes:

(1) For the acquisition or development of land and improvements for use for a public works, public service or other type of development facility; or

(2) For the acquisition, design and engineering, construction, rehabilitation, alteration, expansion, or improvement of such a facility, including related machinery and equipment.

(b) A grant may be made under part 305 only when:

(1) The project for which the grant is applied for will, directly or indirectly—

(i) Improve the opportunities, in the area where the project is or will be located, for the successful establishment or expansion of industrial or commercial plants or facilities;

(ii) Assist in the creation of additional long-term employment opportunities in the area; or

(iii) Primarily benefit the long-term unemployed and members of low-income families;

(2) The project for which the grant is applied for will fulfill a pressing need of the area, or a part of the area, in which the project is or will be located; and

(3) The area for which the project is to be carried out has a strategy and the project is consistent with the strategy.

(c) Maximum assistance for each State. Not more than 15 percent of the annual appropriations available to carry out this part may be expended in any one State.

[64 FR 5358, Feb. 3, 1999, as amended at 64 FR 69875, Dec. 14, 1999]

§ 305.3 Application requirements.

Each application for a grant under part 305 must:

(a) Include evidence of area and applicant eligibility;

(b) Include, or incorporate by reference, a strategy, as provided in § 301.3;

(c) Identify the sources of the other funds, both eligible Federal and non-Federal, that will make up the balance of the proposed project's financing, including any private sources of financing. The application must show that such other funds are committed to the project and will be available as needed. The local share must not be encumbered in any way that would preclude its use consistent with the requirements of the grant; and

(d) Explain how the proposed project meets the criteria of § 305.2.

§ 305.4 Selection and Evaluation.

(a) Projects will be selected in accordance with the application evaluation criteria set forth in § 304.2 of this chapter.

(b) In addition to the evaluation criteria set forth in part 304 of this chapter, project selection and evaluation will be made on the basis of whether, and to what extent, the proposed project will:

(1) Assist in creating new or retaining existing private sector jobs and assist in the creation of additional long-

term employment opportunities rather than merely transferring jobs from one area of the country to another;

(2) Be supported by significant private sector investment;

(3) Leverage or be a catalyst for the effective use of private, local government, State or other Federal funding that is available;

(4) Likely be started and completed in a timely fashion; and

(5) If the project is located in an area with a stable economy and low distress, provide employment opportunities for residents of nearby areas of high distress.

Subpart B—Other Requirements

§ 305.5 Pilot program.

(a) The Chicago Regional Office (CRO) has been authorized to conduct a pilot program through December of 1999 to develop simplified and streamlined procedures for monitoring approved EDA construction projects. Other EDA regional offices have been authorized to conduct their own pilot programs for monitoring compliance with the post-approval project management requirements, provided they first obtain the approval of the Deputy Assistant Secretary for Program Operations. The knowledge and efficiencies gained from the pilot programs will be evaluated and used to improve and revise EDA's post-approval project management requirements and procedures.

(b) As part of this pilot program, the procedures developed by CRO vary from those listed in this subpart B of part 305 in that they place greater reliance on a recipient's certification of compliance. No additional requirements are imposed by CRO procedures. CRO provides guidelines, in its version of the "Requirements for Approved Projects," to all recipients of grants for construction projects monitored by the CRO. The recipient is not required to submit to EDA certain documentation at any set time, but is required to maintain all documentation supporting any and all certifications submitted to CRO, for the period of time provided in 15 CFR part 14 or 24, as appropriate.

[64 FR 69875, Dec. 14, 1999]

§ 305.6 Project management conference.

After the EDA financial assistance award has been accepted by the recipient, EDA may schedule a planning conference with the recipient's representatives to explain the post-approval requirements for administration of the EDA assisted project.

[64 FR 69875, Dec. 14, 1999]

§ 305.7 Selection of the Architect/Engineer.

Guidelines for the selection of the Architect/Engineer (A/E), services to be performed by the A/E, contract provisions for those services and eligible fees for the A/E are as follows:

(a) Selection of the A/E may be by sealed bids using formal advertising or by competitive proposal procedures subject to negotiation of fair and reasonable compensation. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(b) The A/E agreement shall provide for all services required by the recipient for the engineering feasibility, design and contract administration of the proposed project. Appropriate standards or guides developed by such professional organizations as the American Consulting Engineers Council, American Society of Civil Engineers, National Society of Professional Engineers, and/or the American Institute of Architects may be used where the grantee does not have standard procurement/contract documents.

(c) Exhibit A-1, Checklist for Architect/Engineer Services, in the EDA publication, *Requirements for Approved Construction Projects*, displayed at EDA's Web Site, <http://www.doc.gov/eda> (a copy of this publication is available from EDA and a copy will be furnished to an award recipient with the Offer of Financial Assistance), lists the contract provisions which EDA recommends for the A/E contract. The A/E agreement must be furnished to EDA in order for the allowability of the costs of A/E services to be determined.

(d) Eligible project costs may include, but not be limited to, costs for

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A/E fees, resident inspection, test borings, and the testing of materials provided under an agreement or contract with the recipient. The A/E fees should be in conformity with similar costs and projects in the area.

[64 FR 69875, Dec. 14, 1999]

§ 305.8 Project phasing.

The recipient is strongly urged to award all contracts for construction at one time.

(a) Where compelling reasons justify phasing the project, the recipient must secure the approval of EDA for phasing prior to advertising any portion for bid.

(b) The recipient's request for approval of phasing must include valid reasons justifying the request and a statement from the recipient that it can, and will, fund any overrun that arises in the later phases.

(c) Normally, EDA will not disburse funds until all construction contracts have been awarded, (an exception is the development of an underground source of water when required to determine the availability of an adequate source of water supply in terms of both quality and quantity as described in the grant application).

(d) Disbursement of grant funds by phases must be approved by EDA. Such approvals will be given only if the recipient can demonstrate that a severe hardship will result if such approval is not given and there are compelling reasons why all phases cannot be contracted for at the same time.

(e) The recipient must be capable of paying incurred costs prior to the first disbursement of EDA grant funds.

[64 FR 69875, Dec. 14, 1999]

§ 305.9 Recipient furnished equipment and materials.

The recipient may wish to incorporate into the project equipment and/or materials which it will secure through its own efforts.

(a) It is the responsibility of the recipient to assure that such equipment and/or materials are adequate for the proposed use.

(b) The use of such equipment and materials must be approved by EDA to be eligible for EDA financial participa-

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tion. The recipient shall be required to submit with its request for approval either a paid invoice or current quotes from not less than three suppliers who normally distribute such equipment and/or materials. EDA may require that major equipment items be subject to a lien in favor of EDA and may also require a statement from the Recipient regarding expected useful life and salvage value.

(c) The recipient must be prepared to show that the cost claimed for such equipment and/or materials is competitive with local market costs.

(d) Acquisitions of recipient furnished equipment and/or materials under this section is subject to the requirements of 15 CFR part 24 or 15 CFR part 14.

[64 FR 69875, Dec. 14, 1999]

§ 305.10 Construction Management services.

Construction Management is defined as the services of a firm with competent and experienced staff to act as the recipient's agent to perform all or part of project administration. EDA will not normally approve the use of a Construction Management firm for projects costing less than \$5 million. EDA will participate in such cost only if EDA approves the contract for such services.

[64 FR 69876, Dec. 14, 1999]

§ 305.11 Design/Build method of construction.

EDA discourages the use of the same entity to both design and to build EDA assisted facilities. If the recipient desires to use such a method, its use must be justified and EDA must approve the contract. The procurement of, and the compensation to, the designer/builder will be subject to the same rules as for the procurement of construction services.

[64 FR 69876, Dec. 14, 1999]

§ 305.12 Advertising for bids.

In the absence of State or local law to the contrary, the advertisement for bids for construction projects should appear in publications of general circulation a minimum of four times within a 30-day period prior to the

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opening of bids. Additional circulation of the invitation for bids is encouraged if it is needed to obtain the coverage necessary to secure competitive bids. Generally, a minimum of 30 days should be allowed for submission of bids.

[64 FR 69876, Dec. 14, 1999]

§ 305.13 Bid overrun.

If at the construction contract bid opening the lowest responsive bid less deductive alternates, if any, exceeds the funds available for construction, the recipient may reject all bids or augment the funds available in an amount sufficient to enable the award to be made to the low bidder. If available, the recipient may take deductive alternates in the order given in the Invitation for Bids until at least one of the responsive bids less deductive alternates results in a price within the funds announced as available prior to the bid opening. The award then may be made to that bidder. Additional information on the procedures to be followed is in the EDA publication, *Requirements for Approved Construction Projects*.

[64 FR 69876, Dec. 14, 1999]

§ 305.14 Bid underrun.

If at the construction contract bid opening, the lowest responsive bid is less than the funds available for construction, EDA must be notified immediately to determine whether any unneeded grant funds should be deobligated.

[64 FR 69876, Dec. 14, 1999]

§ 305.15 Contract award.

EDA must concur in the award of all necessary contracts for design and construction of the EDA assisted facility in order for the cost to be eligible for EDA reimbursement. Pending EDA approval of the construction contract(s), the recipient may issue the notice to proceed permitting the work to go forward. If the work does go forward prior to EDA approval, the recipient will be proceeding at its own risk pending EDA review and concurrence. The EDA

regional office will advise the recipient of the documents that are required to obtain EDA approval.

[64 FR 69876, Dec. 14, 1999]

§ 305.16 Construction progress schedule.

If requested by EDA, the recipient will secure from the contractor or A/E and furnish a copy to EDA of the estimated construction progress chart and a schedule of amounts for contract payments. The construction progress chart should be updated monthly by the recipient, the A/E or the contractor, and an up-to-date copy furnished to EDA quarterly throughout the construction of the project.

[64 FR 69876, Dec. 14, 1999]

§ 305.17 Project sign.

The recipient shall be responsible for the construction, erection, and maintenance in good condition throughout the construction period, of a sign or signs, (recommended specifications for the sign are included as an exhibit to the EDA publication, *Requirements for Approved Construction Projects*) at the project site in a conspicuous place indicating that the Federal government is participating in the project. EDA may require more than one sign if the project's location so warrants. The recipient should confer with the EDA regional office for suggestions on where the sign(s) should be located.

[64 FR 69876, Dec. 14, 1999]

§ 305.18 Occupancy prior to completion.

If the project or any part of it is to be occupied or used prior to the project's acceptance from the contractor, the recipient must notify EDA of the intent to occupy or use the facility and the effective date of the occupancy or use, secure the written consent of the contractor; secure an endorsement from the insurance carrier and consent of the surety company permitting occupancy or use during the

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period of construction; secure permanent fire and extended coverage insurance and, when required, secure a permit to occupy the facility from the appropriate authority, e.g. the local building inspector.

[64 FR 69876, Dec. 14, 1999]

§ 305.19 Contract change orders.

After construction contracts have been executed, it may become necessary to alter them. This requires a formal contract change order, issued by the recipient and accepted by the contractor.

(a) All contract change orders must be concurred in by EDA even if the recipient is to pay for all additional costs resulting from the change or the contract price is to be reduced.

(b) The work on the project may continue pending EDA review and concurrence in the change order but the recipient should be aware that all such work will be at the recipient's risk as to whether the cost for the work will be an eligible project cost for EDA participation until EDA concurrence is received.

(c) EDA will not approve financial participation in change orders that are solely for the purpose of using excess funds resulting from an underrun of one or more of the items in the approved project budget.

(d) EDA approval of change orders must be based on a finding by EDA that the work called for in the change order is within the project scope and is required for satisfactory operation or functioning of the project.

[64 FR 69876, Dec. 14, 1999]

§ 305.20 Project development time schedule.

The recipient is responsible for expeditiously prosecuting the implementation of the project in accordance with the project development time schedule contained in the EDA grant award. As soon as the recipient becomes aware that it will not be possible to meet the time schedule, it must notify the EDA Regional Office.

[64 FR 69876, Dec. 14, 1999]

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§ 305.21 Controlling budget.

The tabulation of estimated project costs contained in the EDA grant award is the controlling budget for the project.

(a) Budget line item revisions, including the addition of a new line item, which do not involve a change of scope may be approved by EDA if no new EDA funds are involved; another budget line item (preferably the contingency line item, although this is not mandatory) has funds which can be used without significantly adversely affecting the object of that line item; and unless the line item that is proposed to be supplemented is supplemented, the activity associated with that line item cannot be completed.

(b) The recipient shall notify EDA of any proposed transfer of funds from one budget line item to another. The recipient's attention is called to the fact that the addition of a new line item to the approved budget may involve an impermissible change of scope and, therefore, may result in such costs being excluded from EDA's participation. Accordingly, the recipient is advised to discuss the need to add a new line item to the approved budget with EDA regional office staff before any costs are incurred under such new line item.

[64 FR 69877, Dec. 14, 1999]

§ 305.22 Services performed by the recipient's own forces.

The recipient may wish to have a portion or all of the design, construction, inspection, legal services or other work and/or services in connection with the project performed by personnel who are employed by the recipient either full or part time (in-house). Due to the difficulty in monitoring in-house construction and the limited EDA staff available to perform the monitoring, in-house construction is discouraged.

(a) If EDA approves the use of the recipient's in-house forces to construct all or part of the EDA assisted project and the in-house forces are to be augmented by personnel hired specifically for the EDA assisted project, the hourly wages to be paid to such personnel shall be the same as the hourly wages

paid to full time personnel of the recipient doing the same or similar work. If the nature of the work is not similar and/or there is not an established wage scale, the prevailing state or county hourly wage for public employees shall be obtained from the appropriate state or county agency and used for the newly established position. However, non-profit recipients must pay all personnel employed for the construction of the EDA assisted project the prevailing hourly wages for the area as established by the U.S. Department of Labor.

(b) The use of in-house forces for construction may be approved by EDA if:

(1) The recipient has a special skill required for the construction of the project, *e.g.*, construction of unique Indian structures, or

(2) The recipient has made all reasonable efforts to obtain a contractor but has failed to do so because of uncontrollable factors such as the remoteness of the project site or an overabundance of construction work in the project area, or

(3) Substantial cost savings can be demonstrated.

[64 FR 69877, Dec. 14, 1999]

§ 305.23 Public Works projects for design and engineering work.

In general, EDA prefers to award a Public Works grant that includes all of the costs required for the successful completion of a project, including the design and engineering work.

(a) When the purpose of the Public Works project is to accomplish only the design and engineering work for a proposed future construction project, EDA may award a grant for the design and engineering work with the understanding that EDA cannot make a commitment against a future fiscal year appropriation to fund the proposed construction project.

(b) The purpose of the EDA assisted project for design and engineering work is to produce all of the documents required for the construction of the proposed future project in a format and in sufficient quantity to permit a construction contract to be advertised and awarded soon after the project's construction financing has been arranged. The EDA document, *Requirements for*

Approved Construction Projects, should be used to ensure that the proposed construction project meets all applicable Federal requirements.

(c) Design and engineering projects will not generally be considered unless the nature of the proposed project to be considered is complex or environmentally sensitive and EDA makes a determination that it is in the best interest of the Government to award a separate grant for design and engineering.

(d) EDA requires the design/engineering contract to be submitted to and approved by EDA before any EDA grant funds can be disbursed.

[64 FR 69877, Dec. 14, 1999]

§ 305.24 Disbursements of funds for grants.

(a) Disbursements of funds for construction grants are generally made on a reimbursable basis on request of the recipient for reimbursement. Disbursements may be made only:

(1) After execution of all contracts required for the completion of the project. This condition may be waived by EDA if the grantee can demonstrate that enforcement of the condition would place an undue burden on it;

(2) For itemized and certified eligible costs incurred, as substantiated by such documentary evidence as EDA may require;

(3) On the basis of the work accomplished and the percentage of EDA participation, but in no event for more than the total sum stated in the financial assistance award accepted by the grantee;

(4) Upon such evidence as EDA may require that grantee's proportionate share of funds not yet expended is on deposit;

(5) After a determination by EDA that all applicable terms and conditions of the grant have been met; and

(6) After meeting such other requirements as EDA may establish in accordance with other Federal laws, rules and regulations.

(b) Disbursements are generally made in installments, based upon grantee's actual rate of disbursement in accordance with the grant rate.

(c) Advances of funds are allowable when disbursement on a reimbursable

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basis would impose an undue burden, as determined by EDA, upon the recipient.

[64 FR 5358, Feb. 3, 1999, Redesignated and amended at 64 FR 69875, 69877, Dec. 14, 1999]

§ 305.25 Final inspection.

A final inspection will be scheduled by the recipient and appropriate notification given to EDA, when the project has been completed and all deficiencies have been corrected. EDA personnel may attend and participate in the final inspection and, in any event, EDA must be advised of the outcome of such final inspection and the recipient's acceptance of the work.

[64 FR 69877, Dec. 14, 1999]

§ 305.26 Reports.

Financial and performance reports requirements will be specified in the Special Award Conditions of the grant. Construction progress schedule reports will be required in § 305.16.

[64 FR 69877, Dec. 14, 1999]

PART 306—PLANNING ASSISTANCE

Sec.

306.1 Purpose and scope.

306.2 Application evaluation criteria.

306.3 Award requirements.

306.4 Post-approval requirements.

AUTHORITY: 42 U.S.C. 3211; Department of Commerce Organization Order 10-4.

SOURCE: 64 FR 5427, Feb. 3, 1999, unless otherwise noted.

§ 306.1 Purpose and scope.

The primary objective of planning assistance is to provide funding for administrative expenses to support the formulation and implementation of economic development planning programs and for the conduct of planning activities designed to create and retain permanent jobs and increase incomes, particularly for the unemployed and underemployed in the nation's most economically distressed areas. Planning activities supported by these funds must be part of a continuous process involving the active participation of public officials and private citizens, and include the following:

(a) Analyzing local economies;

(b) Defining economic development goals;

(c) Determining project opportunities; and

(d) Formulating and implementing an economic development program that includes systematic efforts to reduce unemployment and increase incomes.

§ 306.2 Application evaluation criteria.

(a) EDA uses the application evaluation criteria set forth in part 304 of this chapter. In addition, EDA evaluates applications on the following:

(1) Quality of the proposed work program;

(2) Management and staff capacity and qualifications of the applicant organization; and

(3) Extent of broad-based representation including for example, involvement of the local civic, business, leadership, labor, minority, and other community interests in the applicant's economic development activities.

(b) Previously funded grantees, in addition to the requirements of paragraph (a) of this section, will also be evaluated on the basis of the quality of their past performance.

§ 306.3 Award requirements.

(a) Planning assistance shall be used in conjunction with any other available Federal planning assistance to ensure adequate and effective planning and economical use of funds.

(b) Grant rate: (1) The maximum Federal grant rate for a project under this part for recipients other than Economic Development Districts is 50 percent, except as supplemented as provided in § 301.4(b) of this chapter.

(2) The maximum Federal grant rate for a project under this part for a district is:

(i) 50 percent, or

(ii) 75 percent, if the project meets the criteria of paragraph (b)(3) of this section.

(3) A district project is eligible for a supplemental grant increasing the Federal share up to and including 75 percent when the applicant is able to demonstrate that:

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(i) The project is intended to address problems arising from actual or threatened high unemployment, low per capita income, or a special need that qualifies an area for eligibility under §301.2(b) of this chapter,

(ii) The project is in significant part devoted to activities addressing the needs of the most economically distressed parts of the total area served by the applicant,

(iii) The applicant is uniquely qualified to address the major causes of actual or threatened economic distress in the area served by the applicant, and

(iv) The applicant cannot provide the non-Federal share otherwise required because in the overall economic situation there is a lack of available non-Federal share due, for instance, to the pressing demand for its use elsewhere.

(4) A project receiving a supplemental grant increasing the Federal share under paragraph (b)(3) of this section is not eligible for additional Federal grant assistance under §301.4(d) of this chapter, i.e., the 10 percent incentive increase for certain projects in districts.

(c) As a condition of the receipt of assistance by a State under this part 306:

(1) The State must have or develop a CEDS;

(2) Any State plan developed with such assistance must be developed cooperatively by the State, political subdivisions of the State, and the economic development districts located wholly or partially within the State;

(3) Any overall State economic development planning assisted under this section shall be a part of a comprehensive planning process that shall consider the provision of public works to:

(i) Promote economic development and opportunity,

(ii) Foster effective transportation access,

(iii) Enhance and protect the environment, and

(iv) Balance resources through the sound management of physical development;

(4) Upon completion of the State plan, the State must,

(i) Certify to EDA that, in the development of the State plan, local and economic development district plans

were considered and, to the maximum extent practicable, the State plan is consistent with the local and economic development district plans; and

(ii) Identify any inconsistencies between the State plan and the local and economic development district plans and provide a justification for each inconsistency; and

(5) The State must submit to EDA an annual report on the planning process so assisted.

[64 FR 5427, Feb. 3, 1999, as amended at 64 FR 69877, Dec. 14, 1999]

§306.4 Post-approval requirements.

Financial, performance and progress reports, and project products will be as specified in the Special Award Conditions of the grant.

[64 FR 5427, Feb. 3, 1999]

PART 307—LOCAL TECHNICAL ASSISTANCE, UNIVERSITY CENTER TECHNICAL ASSISTANCE, NATIONAL TECHNICAL ASSISTANCE, TRAINING, RESEARCH, AND EVALUATION

Subpart A—Local Technical Assistance

Sec.

307.1 Purpose and scope.

307.2 Application evaluation criteria.

307.3 Award and grant rate requirements.

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307.9 Purpose and scope.

307.10 Application evaluation criteria.

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307.12 Post-approval requirements.

AUTHORITY: 42 U.S.C. 3211; Department of Commerce Organization Order 10-4.

SOURCE: 64 FR 5427, Feb. 3, 1999, unless otherwise noted.

Subpart A—Local Technical Assistance

§ 307.1 Purpose and scope.

Local Technical Assistance projects are intended to:

- (a) Determine the causes of excessive unemployment, underemployment, low per capita income, or high poverty rates in areas and regions of the Nation;
- (b) Assist in formulating and implementing new economic development tools, models, and innovative techniques that will raise employment and income levels; and
- (c) Assist distressed communities in formulating and implementing new economic development programs to increase the technology and human capacity of the communities. Local Technical Assistance funds may not be used to start or expand a private business.

§ 307.2 Application evaluation criteria.

EDA selects local technical assistance projects for grant awards according to the general application evaluation criteria set forth in part 304 of this chapter and the extent, as appropriate, the project:

- (a) Strengthens the local capacity to undertake and promote effective economic development programs targeted to people and areas of distress;
- (b) Benefits distressed areas;
- (c) Helps to diversify distressed economies;
- (d) Demonstrates innovative approaches to stimulating economic development in distressed areas; and
- (e) Is consistent with the CEDS or other strategy accepted by EDA for the area in which the project is located.

[64 FR 5427, Feb. 3, 1999, as amended at 64 FR 69878, Dec. 14, 1999]

§ 307.3 Award and grant rate requirements.

(a) EDA will provide assistance for the period of time required to complete the project scope of work, generally not to exceed twelve months.

(b) If the project is regional in scope, EDA may determine that the requirement that public or private nonprofit organizations must act in cooperation with officials of a political subdivision

of a State is satisfied by the nature of the project;

(c) Grant rate:

(1) The maximum Federal grant rate for a project under this subpart is:

- (i) 50 percent, except as supplemented as provided in § 301.4(b); or
- (ii) Up to and including 100 percent, if the project is not feasible without, and merits, a reduction or waiver of the non-Federal share required under the rate provided in § 301.4(b).

(2) A project is eligible for a supplemental grant increasing the Federal share up to and including 100 percent when the applicant is able to demonstrate that,

- (i) It cannot provide the non-Federal share otherwise required because in the overall economic situation there is a lack of available non-Federal share due, for instance, to the pressing demand for its use elsewhere;
- (ii) The project is addressing major causes of distress in the service area and requires the unique characteristics of the applicant, which will not participate in the program if it must provide all or part of a 50 percent non-Federal share; or
- (iii) The project is for the benefit of local, State, regional, or national economic development efforts, and will be of no or only incidental benefit to the recipient.

(3) A project receiving a supplemental grant increasing the Federal share under paragraph (c)(2) of this section is not eligible for additional Federal grant assistance under § 301.4(d) of this chapter, *i.e.*, the 10 percent incentive increase for certain projects in districts.

(4) A local technical assistance project is eligible for a Federal grant rate of more than 75 percent, up to 100 percent, only if approved by the Assistant Secretary.

[64 FR 5427, Feb. 3, 1999, as amended at 64 FR 69878, Dec. 14, 1999]

Subpart B—University Center Program

§ 307.4 Post-approval requirements.

Financial reports, progress reports, and project products will be specified

in the Special Award Conditions of the grant or cooperative agreement.

[64 FR 69878, Dec. 14, 1999]

§ 307.5 Purpose and scope.

The University Center technical assistance program is designed to help improve the economies of distressed areas. It helps institutions of higher education (or other applicants) use their own and other resources to address the economic development problems and opportunities of areas served.

[64 FR 5427, Feb. 3, 1999. Redesignated at 64 FR 69878, Dec. 14, 1999]

§ 307.6 Application evaluation criteria.

EDA selects University Center projects for grant awards according to the general application evaluation criteria set forth in part 304 of this chapter and the extent, as appropriate, the project:

- (a) Has the commitment of the highest management levels of the sponsoring institution;
- (b) Provides evidence of adequate non-Federal financial support, either from the sponsoring institution or other sources;
- (c) Outlines activities consistent with the expertise of the proposed staff, the academic programs, and other resources available within the sponsoring institution;
- (d) Documents past experience of the sponsoring institution in operating technical assistance programs; and
- (e) Balances the geographic distribution of University Centers across the country. Only the Assistant Secretary has the authority to approve the selection for grant assistance of a University Center that has not received University Center assistance for the previous year.

[64 FR 5427, Feb. 3, 1999. Redesignated and amended at 64 FR 69878, Dec. 14, 1999]

§ 307.7 Award and grant rate requirements.

- (a) EDA will provide assistance for the period of time required to complete the project scope of work, generally not to exceed twelve months.
- (b) If the project is regional in scope, EDA may determine that the require-

ment that public or private nonprofit organizations must act in cooperation with officials of a political subdivision of a State is satisfied by the nature of the project;

(c) Financial reports, progress reports and project products will be specified in the Special Award Conditions of the grant or cooperative agreement.

(d) Grant rate:

(1) The maximum Federal grant rate for a project under this subpart is:

(i) 50 percent, or

(ii) 75 percent, if the project is not feasible without, and merits, a reduction or waiver of the non-Federal share.

(2) A project is eligible for a supplemental grant increasing the Federal share up to and including 75 percent when the applicant is able to demonstrate that:

(i) It cannot provide the non-Federal share otherwise required because in the overall economic situation there is a lack of available non-Federal share due, for instance, to the pressing demand for its use elsewhere;

(ii) The project is addressing major causes of distress in the area serviced and requires the unique characteristics of the applicant, which will not participate in the program if it must provide all or part of a 50 percent non-Federal share; or

(iii) The project is for the benefit of local, State, regional, or national economic development efforts, and will be of no or only incidental benefit to the recipient.

(3) A project awarded under this subpart is not eligible for additional Federal grant assistance under the table in § 301.4(b) or the provisions of § 301.4(d) of this chapter, i.e., the 10 percent incentive increase for certain projects in districts.

(e) Direct costs: At least 80 percent of EDA funding must be allocated to direct costs of program delivery.

[64 FR 5427, Feb. 3, 1999. Redesignated and amended at 64 FR 69878, Dec. 14, 1999]

§ 307.8 Post-approval requirements.

Financial reports, progress reports, and project products will be specified

§ 307.9

in the special award conditions of the grant or cooperative agreement.

[64 FR 69878, Dec. 14, 1999]

Subpart C—National Technical Assistance, Training, Research, and Evaluation

§ 307.9 Purpose and scope.

(a) The purposes of National Technical Assistance, Training, Research, and Evaluation projects are:

(1) To determine the causes of excessive unemployment, underemployment, outmigration or other problems indicating economic distress in areas and regions of the Nation;

(2) To assist in formulating and implementing new economic development tools and national, State, and local programs that will raise employment and income levels and otherwise produce solutions to problems resulting from the above conditions;

(3) To evaluate the effectiveness and economic impact of programs, projects, and techniques used to alleviate economic distress and promote economic development, and

(4) To assist in disseminating information about effective programs, projects and techniques that alleviate economic distress and promote economic development.

(b) EDA may during the course of the year, identify specific national technical assistance, training, research or evaluation projects it wishes to have conducted. Ordinarily, EDA specifies these projects in a NOFA, which also provides the appropriate point of contact and address.

(c) National technical assistance, research, training, and evaluation funds may not be used to start or expand a private business.

[64 FR 5427, Feb. 3, 1999. Redesignated at 64 FR 69878, Dec. 14, 1999]

§ 307.10 Application evaluation criteria.

EDA selects projects for national technical assistance, training, research or evaluation grant awards according to the general application evaluation criteria set forth in part 304 of this chapter and the extent, as appropriate, the project:

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(a) Does not depend upon further EDA or other Federal funding assistance to achieve results;

(b) Strengthens the capability of local, State, or national organizations and institutions, including nonprofit economic development groups, to undertake and promote effective economic development programs targeted to people and areas of distress;

(c) Benefits severely distressed areas;

(d) Helps to diversify distressed economies; and

(e) Demonstrates innovative approaches to stimulating economic development in distressed areas.

[64 FR 5427, Feb. 3, 1999. Redesignated at 64 FR 69878, Dec. 14, 1999]

§ 307.11 Award and grant rate requirements.

(a) EDA will provide assistance for the period of time required to complete the project scope of work. Normally, this does not exceed twelve months.

(b) If the project is regional or national in scope, EDA may determine that the requirement that public or private nonprofit organizations must act in cooperation with officials of a political subdivision of a State is satisfied by the nature of the project;

(c) Grant rate:

(1) The maximum Federal grant rate for a project under this subpart is:

(i) 50 percent, except as supplemented as provided in § 301.4(b); or

(ii) Up to and including 100 percent, if the project is not feasible without, and merits, a reduction or waiver of the non-Federal share required under the rate provided in § 301.4(b) of this chapter.

(2) A project is eligible for a supplemental grant increasing the Federal share up to and including 100 percent when the applicant is able to demonstrate that:

(i) The project is addressing major causes of distress in the area serviced and requires the unique characteristics of the applicant, which will not participate in the program if it must provide all or part of a 50 percent non-Federal share; or

(ii) The project is for the benefit of local, State, regional, or national economic development efforts, and will be

of no or only incidental benefit to the recipient.

[64 FR 5427, Feb. 3, 1999. Redesignated and amended at 64 FR 69878, Dec. 14, 1999]

§ 307.12 Post-approval requirements.

Financial reports, progress reports, and project products will be specified in the Special Award Conditions of the grant or cooperative agreement.

[64 FR 69879, Dec. 14, 1999]

PART 308—REQUIREMENTS FOR ECONOMIC ADJUSTMENT GRANTS

Sec.

308.1 Purpose and scope.

308.2 Criteria.

308.3 Use of Economic Adjustment grants.

308.4 Selection and evaluation factors.

308.5 Applicant requirements.

308.6 Post-approval requirements.

APPENDIX A TO PART 308—SECTION 209 ECONOMIC ADJUSTMENT PROGRAM REVOLVING LOAN FUND; PLAN GUIDELINES.

APPENDIX B TO PART 308—SECTION 209 ECONOMIC ADJUSTMENT PROGRAM REVOLVING LOAN FUND GRANTS; STANDARD TERMS AND CONDITIONS.

APPENDIX C TO PART 308—SECTION 209 ECONOMIC ADJUSTMENT PROGRAM REVOLVING LOAN FUND GRANTS; ADMINISTRATIVE MANUAL.

APPENDIX D TO PART 309—SECTION 209 ECONOMIC ADJUSTMENT PROGRAM REVOLVING LOAN FUND GRANTS; AUDIT GUIDELINES.

AUTHORITY: 42 U.S.C. 3211; Department of Commerce Organization Order 10-4.

SOURCE: 64 FR 5429, Feb. 3, 1999, unless otherwise noted.

§ 308.1 Purpose and scope.

(a) The purpose of economic adjustment grants is to address the needs of communities experiencing adverse economic changes that may occur suddenly or over time, including but not limited to those caused by:

(1) Military base closures or realignments, defense contractor reductions in force, or Department of Energy defense-related funding reductions,

(2) Disasters or emergencies, in areas with respect to which a major disaster or emergency has been declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*),

(3) International trade,

(4) Fishery failures, in areas with respect to which a determination that there is a commercial fishery failure has been made under sec. 312(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(a)),

(5) Long-term economic deterioration, or

(6) Loss of a major community employer.

(b) Economic Adjustment grants are intended to enhance a distressed community's ability to compete economically by stimulating private investment in targeted economic sectors through use of tools that:

(1) Help organize and carry out a CEDS;

(2) Expand the capacity of public officials and economic development organizations to work effectively with businesses;

(3) Assist in overcoming major obstacles identified in the strategy;

(4) Enable communities to plan and coordinate: The use of Federal and other resources available to support economic recovery, development of regional economies, or recovery from natural or other disasters; and

(5) Encourage the development of innovative public/private approaches to economic restructuring and revitalization.

[64 FR 5429, Feb. 3, 1999, as amended at 64 FR 69879, Dec. 14, 1999]

§ 308.2 Criteria.

(a) A grant may be made under this part only when the project will help the area to meet a special need arising from actual or threatened severe unemployment or economic adjustment problems resulting from severe changes in economic conditions; and the area for which a project is to be carried out has a strategy and the project is consistent with the strategy, except that the strategy requirement shall not apply to planning projects.

(b) The term "special need" in paragraph (a) of this section means conditions of unemployment, per capita income, or special need that qualify an area for eligibility under § 301.2(b).

(c) Additional criteria, and/or priority consideration factors for assistance, may be set forth in a NOFA.

§ 308.3

§ 308.3 Use of Economic Adjustment grants.

(a) Grants may be used to pay for developing a strategy to alleviate long-term economic deterioration or a sudden and severe economic dislocation, or to pay for a project in implementation of such a strategy.

(1) Strategy grants may support developing, updating, or refining a strategy.

(2) Implementation grants support activities identified in an EDA-approved strategy. Specific activities may be funded as separate grants or as multiple elements of a single grant. Examples of implementation activities include:

(i) Infrastructure improvements, such as site acquisition, site preparation, construction, rehabilitation and/or equipping of facilities;

(ii) Provision of business or infrastructure financing through the funding of locally administered Revolving Loan Funds (RLFs), which may include interest rate buy downs;

(iii) Market or industry research and analysis;

(iv) Technical assistance, including organizational development such as business networking, restructuring or improving the delivery of business services, or feasibility studies;

(v) Public services;

(vi) Training (provided that it does not duplicate Department of Labor, Department of Education or other Federally-supported training programs), and

(vii) Other activities as justified by the strategy which meet statutory and regulatory requirements.

(b) Economic Adjustment grants may be spent directly by the grantee or redistributed to other entities.

(1) Redistribution in the form of grants may only be to eligible recipients of grants under part 308.

(2) Redistribution in the form of loans, loan guarantees, or equivalent assistance may be to public or private entities, including private for-profit entities.

(c) Revolving Loan Fund (RLF) applicants must submit an RLF Plan in accordance with this part and RLF guidelines, Appendix A of this part, displayed at EDA's web site, <http://www.doc.gov/eda>. A copy of the RLF

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guidelines is available from EDA and a copy will be furnished to an award recipient with the Offer of Financial Assistance.

§ 308.4 Selection and evaluation factors.

(a) Projects will be selected in accordance with part 304 of this chapter and the additional criteria as provided in subsections (b) and (c), as applicable.

(b) *Strategy grants.* EDA will review strategy grant applications for assurances that the proposed activities will conform to the CEDS requirements in § 303.3 of this chapter.

(1) Proper authority, mandate, and capacity of the applicant to lead and manage the planning process and strategy implementation;

(2) Representation of the public and private sectors in the development of the strategy's objectives. Representation may include: Public program and service providers, trade and business associations, educational and research institutions, community development corporations, minorities, labor, low-income, etc.; and

(3) The proposed scope of work for the strategy focuses on the structural economic problem(s) and includes provisions for undertaking appropriate research and analysis to support a realistic, market-based, adjustment strategy.

(c) *Implementation Grants.*

(1) EDA will review implementation grant applications for the extent to which,

(i) The strategy shows

(A) An understanding of the economic problems being addressed;

(B) An analysis of the economic sectors that constitute the community's economic base, including particular strengths and weaknesses that contribute to or detract from a community's current and potential economic competitiveness;

(C) Strategic objectives that focus on stimulating investment in new and/or existing economic activities that offer good prospects for revitalization and growth; and

(D) Identified resources and plans for coordinating such resources to implement the overall strategy; and

(ii) The proposed project is identified as a necessary element of or consistent with the strategy.

(2) *Revolving Loan Fund (RLF) Grants.* For applicants asking to capitalize or recapitalize an RLF, EDA will review the application for:

(i) The need for a new or expanded public financing tool to enhance other business assistance programs and services targeting economic sectors and/or locations described in the strategy;

(ii) The types of financing activities anticipated; and

(iii) The capacity of the RLF organization to manage lending, create networks between the business community and other financial providers, and contribute to the adjustment strategy.

(d) Additional criteria, or priority consideration factors for assistance, may be set forth in a NOFA.

[64 FR 5429, Feb. 3, 1999, as amended at 64 FR 69879, Dec. 14, 1999]

§ 308.5 Applicant requirements.

Each application for a grant under part 308 must:

(a) Include evidence of area and applicant eligibility (see part 301);

(b) Include, or incorporate by reference, if so approved by EDA, a strategy, as provided in § 301.3 of this chapter (except that a strategy is not required when a funding request is for planning assistance, *e.g.*, a strategy grant);

(c) Identify the sources of the other funds, both eligible Federal and non-Federal, that will make up the balance of the proposed project's financing, including any private sources of financing. The application must show that such other funds are committed to the project and will be available as needed. The local share must not be encumbered in any way that would preclude its use consistent with the requirements of the grant; and

(d) Explain how the proposed project meets the criteria of § 308.2.

[64 FR 5429, Feb. 3, 1999, as amended at 64 FR 69879, Dec. 14, 1999]

§ 308.6 Post-approval requirements.

(a) Financial, performance, and progress reports will be specified in the Special Award Conditions of the grant.

(b) Projects involving construction shall comply with the provisions of subpart B of part 305.

(c) RLF Supplemental Requirements and Guidelines—RLF grants are subject to the requirements set forth in this part and the publications: EDA's RLF Standard Terms, EDA's RLF Administrative Manual, and EDA's RLF Audit Guidelines, Appendixes B–D of this part displayed at EDA's web site, <http://www.doc.gov/eda>. A copy of these documents is available from EDA and a copy will be furnished to an award recipient with the Offer of Financial Assistance.

APPENDIX A TO PART 308—SECTION 209 ECONOMIC ADJUSTMENT PROGRAM REVOLVING LOAN FUND; PLAN GUIDELINES

OMB Approval No. 0610-0095.

Approval expires 07/31/99

BURDEN STATEMENT FOR REVOLVING LOAN FUND PLAN

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

The information is required to obtain or retain benefits from the Economic Development Administration pursuant to Economic Development Administration Reform Act, Public Law 105-393. No confidentiality for the information submitted is promised or provided except that which is exempt under 5 U.S.C. 552(b)(4) as confidential business information.

The public reporting burden for this collection is estimated to average 40 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Economic Development Administration, Herbert C. Hoover Building, Washington, DC, 20230, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

PURPOSE

EDA requires Revolving Loan Fund (RLF) grantees to manage their RLFs in accordance with a plan. The Plan must be approved by EDA prior to the grant award, but may be modified subsequently, with EDA approval, as provided for in the RLF Administrative Manual (Section X.D.). These guidelines are designed to assist grant applicants prepare and document an RLF Plan that (1) is tailored to supporting implementation of the area's Economic Adjustment Strategy, (2) provides for administrative clarity, continuity and consistency, and (3) is acceptable to EDA.

EDA EVALUATION CRITERIA

EDA will use the following criteria in evaluating RLF Plans:

1. The Plan flows from and is consistent with the Economic Adjustment Strategy for the area, as approved by EDA.
2. It is internally consistent, i.e., it is a coherent statement of the strategic purpose of the particular RLF and the various considerations influencing the selection of its financing strategy, policies and loan selection criteria.
3. The financing strategy demonstrates a knowledgeable analysis of the local capital market and the financing needs of the targeted businesses.
4. The financing policies and portfolio standards are consistent with EDA policy and requirements.
5. The strategic objectives defined are sufficiently meaningful, though not necessarily quantified, so that progress toward them can be assessed over time.
6. The administrative procedures for operating the RLF are consistent with generally accepted prudent lending practices for public lending institutions.

FORMAT AND CONTENT

The format for the Plan provides for two distinct parts: the Revolving Loan Fund Strategy and the Operational Procedures. Each part contains a number of sections designed to facilitate the orderly and logical presentation of the required information. However, the organization of the material and the level of detail provided in the subsections of Part I may be varied to improve the narrative flow, provided the substantive content is adequately covered.

The title page of the Plan document should show the grant recipient organization's name and the date the Plan was approved. Normally, approval is required to be by resolution of the organization's governing board. States are exempted from this requirement.

PART I: THE REVOLVING LOAN FUND STRATEGY

The RLF strategy is the approach selected by the grant recipient organization for using RLF financing as part of the broader business development strategy designed to support achievement of the goals and objectives established through the area/community's economic adjustment or development planning process. The sequence of the subsections of this Part are designed to lead the reader from the general to the more specific, providing the reader with an understanding of how the RLF strategy was arrived at, and establishing the strategic, organizational and programmatic context for the proposed use of the RLF.

A. Economic Adjustment Program Overview

A short description of the area's economic adjustment program, i.e., the strategy and the full range of activities planned and being implemented, should be provided. The following topics must be included:

1. The nature and scale of the economic adjustment problem(s) underlying the economic distress statistics that resulted in the area becoming eligible for Section 209 assistance.
2. The process through which the Economic Adjustment Strategy was developed. Was it an outgrowth of an ongoing economic development program, such as the Overall Economic Development Program (OEDP) required for other forms of EDA assistance, or a special initiative undertaken in-house or by a consultant? What community organizations and interest groups were, and continue to be, involved in further refining the strategy and overseeing its implementation?
3. Area resources/assets (potential or actual growth industries, industries that could be more productive, work force skills, natural resources, etc.) on which the strategy is designed to build. What specific opportunities have been identified for expanding or strengthening existing economic activities and/or creating new activities?
4. The strategic adjustment goals and objectives derived from the conclusions described above and an assessment of the capacity of the community to invest in pursuing the opportunities identified.
5. The implementation programs and activities, both underway and planned, that support the strategic objectives. Note that while business development activities should be identified here, in addition to other activities, Section B requires a detailed discussion of the business development strategy.
6. The organizational structure and distribution of responsibility for managing the on-going adjustment program. What agency

is responsible for maintaining the adjustment strategy, evaluating results and updating it as needed? What agencies/organizations manage or coordinate implementation of key elements in the overall strategy, in particular, the business development strategy of which the RLF is to be a component.

B. The Business Development Strategy

As emphasized in EDA's guidelines for preparing an Economic Adjustment Strategy, a key element of any community's adjustment program should be its business development strategy. A community's business development strategy will depend on the particular opportunities identified for stimulating business investment and productivity. Participation of the business community in the development of the strategy is essential, as is a firsthand knowledge of the characteristics of firms within the targetted economic sectors and their individual needs for assistance.

It is the experience of working with the business sector in designing and implementing a business development strategy that enables the community to (1) determine the need for an RLF, and (2) define the types of RLF investments that will be most effective in complementing other types of business assistance in supporting the objectives of the adjustment program.

If the business development strategy is already well documented in the community's Economic Adjustment Strategy, it need only be summarized sufficiently to provide a bridge between the adjustment strategy and the RLF financing strategy. If not well documented, it should be described in more detail. The following features of the strategy should be addressed:

1. The objectives of the business development strategy, for example, increase the capacity of local firms to supply parts and services to a major local manufacturer, encourage creation of firms to develop and commercialize products that add value to a local resource, assist small manufacturing firms incorporate new production technologies and/or develop new markets, etc.
2. The pertinent characteristics of the businesses or prospective businesses in the economic sectors targeted by the strategy; for example, their size, age, ownership, management, products, markets, competitiveness, production processes, capital, etc.
3. The types of assistance needed by these businesses and would-be entrepreneurs to take advantage of the opportunities identified; for example, access to technical information (market data, new technologies and production processes, exporting), hands-on management and technical assistance, financing, incubator space, etc. How were and are these needs being identified: surveys, on-site interviews, business forums, etc.?
4. The programs/activities being undertaken by the public sector and/or develop-

ment organizations to address the identified needs. Are there other sources of assistance available; for example, a technical college, business development center, industrial extension service, SCORE program, an SBA Small Business Development Center and/or a Certified Development Corporation, etc.? Are there private sector organizations, industry and/or business associations that promote information exchange and technical support?

C. The Financing Strategy

The community's financing strategy should take into account all the sources of financing, public and private, available to support its business development objectives, and should identify the best and appropriate sources to meet the differing creditworthiness and needs of the types of businesses targeted for investment. Analysis of the characteristics of the demand for and supply of financing will determine the appropriate financing niche for the RLF. This should be discussed in terms of the following:

1. The current types of financing needs and opportunities in the targeted business sectors and specific types of firms within them. What further needs and opportunities are expected to emerge as implementation of the strategy progresses?
2. The current availability of public and private financing in the area. What are the prevailing commercial lending policies/restrictions? What role is anticipated for the public and private lenders in supporting the community's business development strategy?
3. The characteristics of the financing niche that the RLF would occupy.
 - a. Types of businesses/firms?
 - b. Types of financing?
 - c. Types of terms?
4. The impact RLF financing is anticipated to have on accomplishing the community's economic adjustment objectives in the next 3-5 years. For example, with respect to:
 - a. Restructuring/strengthening the local economy.
 - b. Stimulating private investment, both through leveraging commercial financing and "showing the way to other investors."
 - c. Enhancing job opportunities.

D. Financing Policies

Consistent with the role identified for the RLF in the community's financing strategy, and with due consideration for the need to manage and protect the RLF capital, the specific policies designed to govern RLF financing should be discussed as follows:

1. The standard lending terms, and any concessionary or special financing techniques that the RLF will entertain to accomplish the objectives of the business development strategy. Discuss the key factors that will determine how such techniques might be employed.

a. The range of allowable interest rates the RLF will charge borrowers.

b. Requirements for equity or cash injections to be provided by the RLF borrower.

(1) Will the policy be the same for new as opposed to established businesses?

(2) Will any deviations be allowed, e.g., for working capital loans?

c. The standard repayment terms for both working capital and fixed asset loans, and any deviations.

(1) If the RLF anticipates moratoria on principal payments, specify the maximum moratorium period.

(2) What key factors will determine when any deviations will be employed?

2. The types of collateral to be required of borrowers.

3. The minimum and maximum loan sizes that the RLF will entertain.

E. Portfolio Standards and Targets

RLF portfolio standards and targets are used by EDA as surrogate measures for the economic performance of an RLF. They should be established as follows:

1. The anticipated percentage of RLF investments in each of the following:

a. Industrial/commercial/Service businesses (Show any subcomponents, if significant and if identified in the business development strategy.)

b. New businesses/expansion/retention

2. The anticipated percentage of the RLF portfolio that will be targeted towards working capital loans and fixed asset loans (note that EDA allows a maximum of 50 percent for working capital loans during the grant disbursement phase of the RLF)

3. Private investment leveraging ratio for the portfolio overall. Sources of private investment that may be included are: financing from other lenders (e.g., banks, investment companies, etc.) or private investment on the part of the borrower or other firms in conjunction with the RLF financing.

4. Cost per job for the portfolio overall.

F. RLF Loan Selection Criteria

In addition to the required selection criterion that financing is not otherwise available, what “economic impact” criteria will be used to evaluate proposed loans?

G. Performance Assessment Process

Describe the process and factors that the grant recipient will use (1) to periodically assess the performance of the RLF in accomplishing its stated economic adjustment objectives, and (2) to modify the RLF Plan as needed.

PART II: REVOLVING LOAN FUND OPERATIONAL PROCEDURES

This part of the RLF Plan is designed to cover in detail the specific operational pro-

cedures to be followed by the grant applicant/recipient in administering the RLF.

Section A requires an overview of the organizational distribution of responsibility for the key elements in operating the RLF. Sections B. through E. require, for each item indicated, a short description of (1) how it will be addressed, the procedure/requirement to be used, if any, (2) the documentation that will be used, (3) the party(ies) responsible for carrying out the requirement, and (4) the time frame within which it is to be implemented.

A. Organizational Structure

1. Provide an overview of the organizational structure within which the RLF will be operated. For each of the functions critical to the conduct of the RLF’s lending activities, identify the responsible parties including any from outside the organization. Use a schematic diagram if helpful.

Critical operational functions include: identification and development of appropriate financing opportunities; provision of business assistance and advisory services to prospective and actual borrowers (identify the types and sources of services available); environmental reviews; and loan management (loan processing, credit analysis, loan write-ups and recommendations, closings, collections and servicing, handling defaulted loans and foreclosures, and compliance with grant requirements). Note that a more detailed description of how some of these functions will be handled is requested in sections below.

2. Describe the size and general composition of the organization’s RLF loan board; include experience and occupational requirements. Describe its duties and responsibilities, membership terms and quorum requirements.

An RLF loan board must be responsible for approving loans, all major loan modifications (or waivers), and loan foreclosure actions. It must also be responsible for at least recommending RLF loan policy (actual approval of loan policy may take place at a higher level). The loan board should include members with business experience (representation of targeted industries and/or business sectors is desirable provided it will not cause a conflict of interest), members with financing experience, members from both the public and private sectors and minority members representative of the community. At least one member with financing experience (similar to the type of loans to be made under the RLF program) must be present for each loan decision.

B. Loan Processing Procedures

1. Standard Loan Application Requirements—include a list of items or a checklist showing the items to be required of RLF

loan applicants. [It is acknowledged that not all items will apply to each loan applicant and that certain situations may require additional items not on the list.]

2. Credit Reports.
3. Appraisal Reports.
4. Environmental Reviews.
5. Standard Collateral Requirements—include requirements for personal guarantees and insurance (hazard, keyman life, flood, and title).
6. Standard Equity Requirements—when listing equity requirements, differentiate between existing and new companies, and fixed asset and working capital loans. Note that an allowable requirement for a working capital loan may simply require a borrower to have a certain net working capital position. Equity is defined as an amount or percentage of capital (or lien free assets) that is required to be added to a project from borrower or investor sources.
7. Loan Write-up—indicate the items to be addressed in the RLF loan write-up. At a minimum, a loan write-up must discuss how the proposed RLF loan is not replacing private lender funding sources—refer to Section IV.B.3. of the RLF Administrative Manual. Other items should include a summary of the firm's history, management, product, production capability, market conditions, financing, collateral, repayment ability, consistency with the RLF's financing policy and whether there are any environmental problems associated with the project. A Loan Write-up summarizes the key aspects of a loan; it is prepared by the RLF grant recipient and is usually provided to the RLF loan board prior to the loan decision.
8. Procedures for loan approvals, documentation of loan board decisions, and notification of borrowers.

C. Loan Closing and Disbursement Procedures

1. General Closing Requirements—include documentation required to confirm any needed equity injection and private lender financing.
2. Loan Closing Documentation Requirements—provide a checklist of the standard documents that will be required for the types of loans to be made under the RLF. Indicate any special timing requirements, e.g., Uniform Commercial Code (UCC) searches prior to and/or subsequent to a UCC filing on personal property.
3. Loan Disbursement Requirements—indicate borrower requirements for drawing loan funds, i.e., is a borrower required to provide any evidence (e.g., an invoice) that it has ordered an asset prior to receiving loan funds to ensure that funds are ordered only when actually needed and that they will be used as agreed in the loan agreement, any pre-disbursement requirements for working capital loans, any special requirements for construction financing, and any other disbursement

procedures that are necessary to protect RLF assets.

D. Loan Servicing Procedures

1. Loan Payment and Collection Procedures—indicate the standard method(s) of loan payment by RLF borrowers, e.g., payment coupon books, automatic payment withdrawals, or other methods. Indicate any procedures for protection and timely deposit of RLF loan payments. Note that unused RLF funds must be Federally insured if deposited in a financial institution.
2. Loan Monitoring Procedures—indicate the standard procedures for monitoring loan conditions, including requirements/procedures for financial statements, annual insurance renewals, UCC refilings, borrower site visits, tickler files, and compliance with any Federal requirements of the grant.
3. Late Payment Follow-up Procedures—indicate the standard procedures for handling loans that are in arrears up to 90 days and discuss any late penalty requirements (which should be stated in the note).
4. Procedures for Handling Loans over 90 days in arrears.
5. Write-off Procedures—indicate how the RLF will account for loan write-offs.

E. Administrative Procedures

1. Procedures for Loan Files and Loan Closing Documentation—indicate what should be included in an RLF loan file, e.g., the application, loan commitment letters, copy of private lender loan agreement, financial statements, annual insurance certifications, annual site visit reports, general correspondence, job reports, etc. Indicate any procedures for safekeeping loan documents, particularly the loan closing documents. At a minimum, all original notes, loan agreements, personal guarantees and security agreements should be placed in a fire-proof facility or container.
2. Procedures for Complying with EDA Reporting Requirements—provide an overview of how RLF loan payments and RLF Income sources will be tracked and accounted for in order to meet EDA reporting requirements. [RLF Income sources including interest from loans and from accounts holding idle RLF funds, loan fees, late payment fees, and any other sources of RLF revenue.]
3. Grantee control procedures for ensuring compliance with all grant requirements and for monitoring the RLF portfolio.

Prior to the initial grant disbursement, the grant recipient must also certify that the basic loan documents are in place and that these documents have been reviewed by counsel for adequacy to protect the interests of the RLF. The minimum documents required are:

- Note
- Loan Agreement

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- Security Agreement(s)
- Deed of trust or Mortgage
- Agreement of Prior Lienholder

**APPENDIX B TO PART 308—SECTION 209
ECONOMIC ADJUSTMENT PROGRAM
REVOLVING LOAN FUND GRANTS;
STANDARD TERMS AND CONDITIONS**

Approval expires 07/31/99.

**BURDEN STATEMENT FOR REVOLVING
LOAN FUND STANDARD TERMS AND
CONDITIONS**

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

The information is required to obtain or retain benefits from the Economic Development Administration pursuant to Economic Development Administration Reform Act, Public Law 105-393. No confidentiality for the information submitted is promised or provided except that which is exempt under 5 U.S.C. 552(b)(4) as confidential business information.

The public reporting burden for this collection is estimated to average 12 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Economic Development Administration, Herbert C. Hoover Building, Washington, DC, 20230, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

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A. PROGRAM STATEMENT

These Standard Terms and Conditions apply to all Economic Adjustment Program awards for revolving loan fund activities funded under Section 209 of the Public Works and Economic Development Act of 1965, P.L. 89-136, as amended (42 U.S.C. 3121, *et seq.*).

For the purpose of these Standard Terms and Conditions, (a) the term "Government" refers to the Economic Development Administration (EDA); (b) the term "Recipient" refers to the undersigned recipient of Government funds under the Agreement to which this attachment is made a part; (c) the term "Department" refers to the Department of Commerce; (d) the term "Regional Office" refers to the appropriate Regional Office of the Economic Development Administration; (e) the term "Federal Program Officer" refers to the Regional Director of the appropriate EDA Regional Office (the Federal Program Officer is responsible for programmatic and technical aspects of this award); (f) the term "Grants Officer" refers to the Assistant Secretary for Economic Development or his or her designated representative (the Grants Officer is responsible for all administrative aspects of this award and is authorized to award, amend, suspend, and terminate financial assistance awards); (g) the term "Project" refers to the activity for which the Government grant was awarded; and (h) "RLF" refers to this revolving loan fund grant project.

B. OVERALL STATUTORY AND EXECUTIVE ORDER REQUIREMENTS

Some of the terms and conditions herein contain, by reference or substance, a summary of the pertinent statutes or regulations issued by a Federal agency and published in the Code of Federal Regulations. To the extent that it is a summary, such term or condition is not in derogation of, or an amendment to, the statute or regulation.

The Recipient shall comply, and require any contractor which provides services on behalf of the Recipient to comply with all applicable Federal, state, territorial, and local laws, in particular, the following Federal public laws, the regulations issued thereunder, Executive Orders and OMB Circulars, and the requirements listed in Section D. herein:

.01 *EDA Statute and Regulations:* Applicable provisions of the Public Works and Economic Development Act of 1965, P.L. 89-136, as amended (42 U.S.C. 3121, *et seq.*) and regulations in 13 CFR, Chapter III.

.02 *Administrative Requirements:* Administrative requirements for grants, OMB Circular No. A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," and its attachments, as amended or as superseded in the Department's regulations, or those found in 15 CFR Part 24, "Uniform Administrative Requirements For Grants and Cooperative Agreements to State and Local Governments," as applicable. In the event of inconsistency or conflict between the administrative requirements and EDA's enabling legislation or regulations, the latter shall prevail;

.03 *Civil Rights Requirements:* Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d-2000d-4); 15 CFR Part 8; Executive Orders 11246 and 11375; 41 CFR Part 60-4; P.L. 92-65, Section 112, prohibiting sex discrimination on programs under the Public Works and Economic Development Act; 13 CFR Part 317 imposing civil rights requirements on recipients; regulations issued pursuant to the Age Discrimination Act of 1965 (42 U.S.C. 6101 *et seq.*) 15 CFR Part 20; Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and the implementing regulations of the Department of Commerce in 15 CFR 8b, prohibiting discrimination against and providing fair and equitable treatment of the handicapped under programs or activities receiving Federal financial assistance; and such other civil rights legislation, regulations, and Executive Orders as applicable;

.04 *Hatch Act:* Recipient will comply with the provisions of the Hatch Act (5 U.S.C. Section 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment is funded in whole or in part with Federal funds.

C. GENERAL REQUIREMENTS

.01 *Grant Terms and Conditions:* The Recipient and any consultant/contractor providing services on behalf of the Recipient shall comply with the Grant Award and all terms and conditions thereto. The decision of the Government in interpreting the terms and conditions of this grant shall be final.

.02 *Compliance with EDA Instructions:* The Recipient shall comply with EDA Revolving Loan Fund guidelines, manuals and other instructions as may be issued from time to time by the Government in connection with the assistance herein offered. All such instructions are to be applied on the effective date of the award.

.03 *Exclusion from Certification and Disclosure requirements:* An Indian tribe or organization that is seeking an exclusion from Certification and Disclosure requirements must provide (preferably in an attorney's opinion) the Government with the citation of the provision or provisions of Federal law upon which it relies to conduct lobbying activities

that would otherwise be subject to the prohibitions in and to the Certification and Disclosure requirements of Section 319 of Public Law No. 101–121.

.04 Duplication of Work: The purpose and scope of work for which this award is made shall not duplicate programs for which monies have been received, committed, or applied for from other sources, public or private. The Recipient shall submit full information about related programs that may be initiated within the award period. The Recipient shall immediately provide written notification to the Federal Program Officer in the event that other Federal financial assistance is received during the award period relative to the scope of work of this award.

.05 Reimbursement of Costs Prior to Award: Funds provided under this award shall not be used to pay for the cost of any work started or completed prior to the effective date of this award.

.06 Other Funding Sources: Federal-share funds budgeted or awarded for this Project shall not be used to replace any financial support previously provided or assured from any other source. The Recipient agrees that the general level of expenditure by the Recipient for the benefit of program area and/or program designated in the Special Terms and Conditions of this award, or any amendment or modification thereto, shall be maintained and not reduced as a result of the Federal-share funds received under this Project.

.07 Availability of Information: The Recipient agrees that all information resulting from its activities and not exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 522, shall be made freely available to the public. This requirement is exclusive to the Recipient and is not applicable to confidential information disclosed or obtained in the normal borrower/lender relationship.

.08 Procurement Standards & Use of Consultants/Contractors: The procurement standards and procedures set forth in 15 CFR Part 24, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," Section 24.36 or OMB Circular No. A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," Attachment O or its implementing Department regulation, as appropriate, shall apply to all awards. For all proposals and contracts where costs are expected to exceed the simplified acquisition threshold, the scope of work (request for proposal) and the cost of such must be submitted to and approved by the Government prior to employment of such consultants or contractors. The Recipient shall ensure that any consultant or contractor paid from funds provided under this award either directly or

through program income is bound by all applicable award terms and conditions. The Government shall not be liable hereunder to a third party nor to any party other than the Recipient.

.09 Program Performance Notification: The Recipient shall inform the Government as soon as the following types of conditions become known:

a. Problems, delays, or adverse conditions that materially affect the ability to attain program objectives, prevent the meeting of time schedules or goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any EDA assistance needed to resolve the situation.

b. Favorable developments or events that enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

.10 Attorney and Consultant Fees: The Recipient hereby agrees that no funds made available from this grant shall be used, directly or indirectly, for paying attorneys' or consultants' fees in connection with securing this grant or other grants or cooperative agreements from EDA.

.11 Suspension and Termination of Grant:

a. When a Recipient has failed to comply with the grant award stipulations, standards, or conditions, EDA may, on reasonable notice to the Recipient, suspend the grant and withhold further payments, or prohibit the Recipient from incurring additional obligations of grant funds, pending corrective action by the Recipient or a decision to terminate in accordance with the following paragraphs. EDA shall allow all necessary and proper costs which the Grantee could not reasonably avoid during the period of suspension, provided they meet the provisions of applicable OMB cost principles and the grant terms and conditions.

b. Whenever the Recipient shall fail in its fiduciary responsibilities, or shall be unable or unwilling to perform, as trustee of this grant to serve the purpose of the Economic Adjustment program for which it was made, EDA may suspend, terminate or transfer this grant to an eligible successor Recipient, with jurisdiction over the Project area, to administer it as such trustee. The Recipient shall cooperate with EDA in accomplishing the transfer of this grant to such successor Recipient.

c. EDA may terminate any grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Recipient has failed to comply with the conditions of the grant (termination for cause). EDA shall promptly notify the Recipient in writing of the determination and the reasons for the termination, together with the effective date. Payments made to

recipients or recoveries by the Federal sponsoring agencies under grants or other agreements terminated for cause shall be in accordance with the legal rights and liabilities of the parties. Whenever EDA terminates any RLF grant for cause, in whole or in part, it has the right to recover residual funds and assets of the RLF grant in accordance with the legal rights of the parties.

d. In accordance with subsections (a) (b) and (c) above, EDA may suspend or terminate any grant for cause based on, but not limited to, the following: (1) failure to make loans in accordance with the RLF Plan, including the time-schedule for loan closings; (2) failure to obtain prior EDA approval for such changes to the RLF Plan, including provisions for administering the RLF, as specified in the RLF Administrative Manual, as amended; (3) failure to submit progress, financial or audit reports as required by the terms and conditions of the grant agreement; (4) failure to comply with prohibitions against conflict-of-interest for any transactions involving the use of RLF funds; (5) failure to operate the RLF in accordance with the RLF Plan and the terms and conditions of the grant agreement.

e. EDA or the Recipient may terminate this grant in whole or, in part, when the parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds (termination for convenience). The parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The Recipient shall cancel as many outstanding obligations as possible. EDA shall allow full credit to the Recipient for the Federal share of the noncancelable obligations, properly incurred by the Recipient prior to termination.

f. If there is a partial termination of the EDA grant, the full amount of the original nonfederal matching share is expected to be retained in the RLF for lending purposes unless otherwise provided for in the grant agreement or agreed to in writing by the Government.

g. Other grant closeout procedures set forth in 15 CFR, Part 24, or OMB Circular No. A-110, or its implementing Department regulation, as applicable, shall also apply.

D. RLF REQUIREMENTS FOR RECIPIENTS AND BORROWERS

.01 Prudent Lending Practices: The Recipient agrees to administer the RLF in accordance with lending practices generally accepted as prudent for public loan programs. Such practices cover loan processing, documentation, loan approval, collections, servicing, administrative procedures and recovery actions. The Recipient agrees to follow local laws and filing requirements to perfect and

maintain security interests in RLF collateral.

.02 Inclusion of requirements in RLF Loan Documents: The Recipient agrees to incorporate applicable Federal requirements described herein in RLF loan agreements to ensure borrower compliance.

.03 Annual RLF Plan Certifications: The Recipient agrees to certify annually to the Government that the RLF is being operated in accordance with the RLF Plan (as referenced in the Special Terms and Conditions of the grant, as amended); and that the RLF Plan is consistent with, and supports, implementation of the current Economic Adjustment Strategy for the project area.

.04 RLF Plan Modifications: The Recipient agrees, because economic conditions change and new approaches to stimulating economic adjustment may be needed, to seek EDA approval of such modifications to the RLF Plan as may be required for the RLF to continue to be fully supportive of the area's Economic Adjustment Strategy, as updated and approved by EDA. The Recipient further agrees to request EDA approval of modifications to the Plan at any time there is evidence that such modifications are needed to ensure effective use of the RLF as a strategic financing tool.

.05 Eligible Area: The Recipient shall use the RLF only in the areas eligible for Section 209 assistance as approved by the Government and defined in the Special Terms and Conditions of the grant. To add a new eligible area to a previously awarded RLF grant, the Recipient shall obtain the prior written approval of the Government. To ensure that the economic benefits of RLF loans remain within eligible lending areas, the Recipient shall include a *provision* in RLF loan documents to call loans if the economic activity financed is moved outside the eligible lending area.

.06 Relocation: The Recipient agrees that RLF funds shall not be used to relocate jobs from one commuting area to another. The Recipient shall include a *provision* in RLF loan documents to call loans if it is determined that (a) the business used the RLF loan to relocate jobs from another commuting area or (b) the economic activity financed is moved to another commuting area to the detriment of local workers.

.07 Grant Disbursement Schedule: The Recipient agrees, unless otherwise specified in the Special Terms and Conditions of the grant award, to make loans in the initial round of lending at a rate such that no less than 50 percent of the grant funds are disbursed within 18 months, 80 percent within two years and 100 percent within three years of the date of the grant award. The Recipient acknowledges that if it fails to meet any of these disbursement deadlines, the Government will not disburse additional grant funds unless (1) the funds are required to

close loans approved prior to the deadline and which will be fully disbursed to the borrower(s) within 45 days, or (2) the funds are required to meet continuing disbursement obligations on loans closed prior to the deadline, or (3) the Government has approved in writing an extension of the deadline. In no event, will the time permitted for full disbursement of the grant funds extend beyond September 30, of the fifth year after the fiscal year of the grant award. Funds not disbursed in accordance with the foregoing will automatically be retained by the Federal Government.

.08 Capital Utilization Standard: Subsequent to full disbursement of the grant funds, the Recipient agrees to manage its repayment and lending activities to maintain 75 percent or more of the RLF capital loaned out or committed at all times, unless a different standard has been agreed to in writing by the Government. The Recipient agrees to comply with Government sanctions if the applicable capital utilization standard is not met within a reasonable time period.

.09 Civil Rights: The Recipient agrees that RLF funds will be made available on a non-discriminatory basis and that no applicant will be denied a loan on the basis of race, color, national origin, religion, age, handicap, or sex. The Recipient agrees to market the RLF program to prospective minority and women borrowers. The Recipient shall include a *provision* in the RLF loan documents that prohibits borrowers from discriminating against employees or applicants for employment or providers of goods and services. The Recipient agrees to monitor borrower compliance with civil rights laws.

.10 Environment: The Recipient shall develop and implement an environmental review process in accordance with the intent of the National Environmental Policy Act of 1969, as amended (P.L. 91-190), as implemented by the "Regulations" of the President's Council on Environmental Quality (40 CFR Parts 1500-1508).

In addition, the Recipient shall indemnify and hold the Government harmless from and against all liabilities that the Government may incur as a result of providing an award to assist, directly or indirectly, in the preparation of site(s) or construction, renovation or repair of any facility or site(s), if applicable, to the extent that such liabilities are incurred because of ground water, surface, soil or other conditions caused by operations of the Recipient or any of its predecessors on the property;

The Recipient shall adopt procedures to review the impacts of prospective loan proposals on the physical environment. The RLF Plan shall provide for disapproval of any loan project which would adversely (without mitigation) impact flood plains, wetlands, significant historic or archeological properties, drinking water resources,

or nonrenewable natural resources. In administering the RLF, the Recipient shall adopt procedures to comply with applicable laws and statutes including, but not limited to, the following:

a. The Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

b. The Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, *et seq.*);

c. The Coastal Zone Management Act of 1972, P.L. 92-583, as amended (16 U.S.C. 1451, *et seq.*);

d. Executive Order 11988, Floodplain Management (May 24, 1977), and regulations and guidelines issued thereunder by the Economic Development Administration;

e. Executive Order 11990, Protection of Wetlands (May 24, 1977);

f. The Endangered Species Act of 1973 P.L. 93-205, as amended (16 U.S.C.1531, *et seq.*);

g. The Safe Drinking Water Act, P.L. 93-523, as amended (42 U.S.C. 300f-300j-9);

h. The Wild and Scenic Rivers Act, as amended (16 U.S.C. 1271, *et seq.*);

i. The Resource Conservation and Recovery Act of 1976, P.L. 94-580, as amended (42 U.S.C. 6901);

j. The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), P.L. 96-510, as amended, by Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9601, *et seq.*) [As deemed necessary, the Recipient shall require compliance with EDA policy and procedures regarding the identification of hazardous and toxic waste on real property affected by RLF activities in accordance with EDA Directive 17.01, promulgated to reduce liabilities for environmental cleanup under CERCLA and SARA. This will require a certification to demonstrate a "due diligence" examination of project site(s) and for any environmental contamination that may affect real property for which EDA might be placed in the chain of title, or that is affected by EDA assisted construction activities.];

k. The National Historic Preservation Act P.L. 89-665 (16 U.S.C. 470, *et seq.*), (36 CFR Part 800);

l. Coastal Barriers Resources Act P.L. 97-348 (16 U.S.C. 3501, *et seq.*); and

m. All state and local environmental review requirements with all applicable Federal, state and local standards. The Recipient shall ensure that potential borrowers' environmental submittal is reviewed. Should a proposed RLF project require the preparation of an Environmental Assessment (EA) or an Environmental Impact Statement/Report (EIS/EIR) in response to Federal, state or local requirements, the Recipient shall be responsible for ensuring compliance with the requirement prior to providing any loan assistance under the RLF.

.11 Earthquake Requirements: For use in new building construction projects: The Recipient is aware of and intends to comply

with one of three model Codes outlined by the Committee on Seismic Safety in Construction (ICSSC): 1991 ICBO Uniform Building Code; 1992 Supplement to the BUCA National Building Code; or 1991 Amendments to the SBCC Standard Building Code.

.12 Flood Hazard Insurance: Where applicable, the Recipient shall require RLF borrowers to obtain flood hazard insurance pursuant to the Flood Disaster Protection Act of 1973, P.L. 93-234, as amended (42 U.S.C. 4002, *et seq.*);

.13 Davis-Bacon: The Recipient shall require borrowers to comply with the Davis-Bacon Act, as amended [40 U.S.C. 276a-276a-5); 42 U.S.C. 3222], when construction is financed in whole or in part by the RLF and when any related construction contract exceeds \$2,000.

.14 Contract Work Hours and Safety Standards Act & Anti-Kickback Act: The Recipient shall require borrowers to comply, where applicable, with the Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. 327-333) and with the Anti-Kickback Act, as amended (40 U.S.C. 276(c); 18 U.S.C. 874);

.15 Access for the Handicapped: The Recipient shall ensure that if the RLF is used in whole or in part to finance a building or facility intended for use by the public or for the employment of physically handicapped, it must be accessible to the physically handicapped, pursuant to Public Law 90-480, as amended (42 U.S.C. 4151, *et seq.*), and the regulations issued thereunder;

.16 Conflict of Interest:

a. The Recipient shall not make RLF funds available to a business entity if the owner of such entity or any owner of an interest in such entity is related by blood, marriage, law or business arrangement to the Recipient or an employee of the Recipient or any member of the Recipient's Board of Directors, or a member of any other Board (hereinafter referred to as "other Board") which advises, approves, recommends or otherwise participates in decisions concerning loans or the use of grant funds.

b. No officer, employee, or member of the Recipient's Board of Directors, or other Board, or person related to the officer, employee, or member of the Board by blood, marriage, law, or business arrangement shall receive any benefits resulting from the use of loan or grant funds, unless the officer, employee, or Board member affected first discloses to the Recipient on the public record the proposed or potential benefit and receives the Recipient's written determination that the benefit involved is not so substantial as to affect the integrity of the Recipient's decision process and of the services of the officer, employee or board member.

c. An officer, employee or board member of the Recipient shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment or any other thing of mone-

tary value, for himself or for another person, from any person or organization seeking to obtain a loan or any portion of the grant funds.

d. Former board members and/or officers are ineligible to apply for or receive loan or grant funds for a period of one year from the date of termination of his/her services.

E. FINANCIAL REQUIREMENTS

.01 Budget: The line item budget for this award is found in the budget summary of the grant award. Funds budgeted under the RLF portion of a grant shall be used for loan projects and, if specified, for audit costs related to the RLF, but shall not be used for other administrative costs related to the RLF.

.02 Method of Payment: Payments will be made by the Automated Clearing House Electronic Funds Transfer (ACH/EFT) System which transfers funds directly to a Recipient's bank account without regard to dollar amount. Initially, the Recipient must complete the Payment Information Form ACH Vendor Payment System (SF 3881) and return it to the EDA Regional Office. The award number must be included on the first line of the COMPANY INFORMATION section. The SF 3881 should first be forwarded to the Recipient's bank so that the bank can fill in the FINANCIAL INSTITUTION INFORMATION section before returning the SF 3881 to the EDA Regional Office.

The completed SF 3881 shall be submitted together with the completed Request for Advance or Reimbursement (SF 270), to the EDA Regional Office. Subsequently, only a completed SF 270 is necessary to request a transfer of funds unless information on the original SF 3881 has changed. *Note:* When completing SF 270 for an ACH/EFT transfer of funds, *type* "ACH/EFT" in Item No. 10 of the form to indicate a transfer of funds through the Automated Clearing House Electronic Funds Transfer System.

.03 Request For Budget Change: Request for budget changes must be submitted to the Federal Program Officer for approval. However, a budget change involving a reduction in the line item for audit costs for an equal increase in the RLF capital requires only written notification to the Government to be effective.

.04 Matching and Cost Sharing: a. Local Share: In affirming this award, the Recipient certifies that the non-Federal share of project costs is committed and is available as needed for the project, that the non-Federal share is from sources which can be used as match for the EDA project and that the non-Federal share is not encumbered or otherwise conditional.

b. To the extent applicable to this award, cash contributions by the Recipient are expected to be paid out at the same general rate as the Federal share, but in no event

shall the Federal share be paid out at a faster rate than the Recipient's contribution. Any exceptions must be approved in writing by the Grants Officer based on sufficient documentation demonstrating previously determined plans for or later commitment of cash contributions.

c. The approved budget for this award is predicated normally upon a sharing of allowable costs. In the event allowable costs are less than the approved budget, the Federal share of this award will be limited to the Federal pro-rata share of the total allowable costs not to exceed the total Federal dollar amount reflected on the award document. However, consistent with Section C.11.f, the full amount of the nonfederal matching share will be expected to remain for use in the RLF unless otherwise provided for.

.05 *Program Income*: Program Income includes repayments of RLF loan principal and RLF Income (defined in Section E.06 below). Program Income, with the *exception* of current RLF Income, may be used only for re-lending and must be used by the Recipient (1) prior to requesting a disbursement of EDA grant funds, or (2) concurrently with the proceeds of such a disbursement.

.06 *RLF Income*: RLF Income is defined as interest earned on outstanding loan principal, interest earned on accounts holding RLF funds not needed for immediate lending, all loan fees and loan-related charges received from RLF borrowers, and other income generated from RLF operations. The Recipient may use RLF Income only to capitalize the RLF and/or to cover eligible and reasonable costs necessary to administer the RLF, unless otherwise provided for in the Special Terms and Conditions of the grant.

If RLF Income will be used to pay for RLF administrative expenses, the Recipient agrees (1) to use RLF Income only for those administrative expenses incurred during the same twelve-month period in which it is earned, and (2) to add any RLF Income remaining unexpended at the end of each period to the RLF capital base. RLF Income added to the RLF capital base may not be withdrawn, other than for lending purposes, without the prior written consent of the Government. The Recipient should refer to current EDA administrative instructions regarding specification of the twelve-month accounting period, the format for documenting income and expenses and such reporting requirements as may be applicable.

.07 *Indirect Costs*: a. The Recipient may use indirect costs as an eligible administrative expense chargeable against RLF Income if the indirect costs reflect an established indirect cost rate negotiated and approved by a cognizant Federal agency prior to the year end in which the costs are charged, subject to the limitation in subparagraph b. below.

b. The Department's acceptance of negotiated rates as provided in this section is

subject to total indirect costs not to exceed 100 percent of total direct costs charged against RLF Income. Where the indirect cost rate exceeds 100 percent, a 100 percent rate shall be used to compute the dollar amount of indirect costs.

c. Excess indirect costs will not be used to offset unallowable or disallowed direct costs when the total allowable costs are determined.

d. If the Recipient has not previously established an indirect cost rate with a Federal agency, the negotiation and approval of a rate is subject to the procedures in the applicable OMB costs principles and the following subparagraphs:

1. The Office of Inspector General (OIG) is authorized to negotiate indirect cost rates on behalf of the Department for those organizations which the Department is cognizant. The OIG will negotiate only fixed rates. The Recipient is required to submit to the OIG (with a copy of its transmittal letter provided to the Grants Officer) the documentation (indirect cost proposal, cost allocation plan, etc.) necessary to establish such rates 90 days prior to the year end in which indirect costs will be charged. If the documentation is not submitted during this time period, charges of indirect costs against RLF Income for that year will not be allowable and cannot be carried forward, unless the OIG determines there is a finding of good and sufficient cause to excuse the Recipient's delay in submitting the documents.

2. When a Federal agency other than the Department of Commerce has responsibility for establishing an indirect cost rate, the Recipient is required to submit to that Federal agency (with a copy of its transmittal letter provided to the Grants Officer and the Department of Commerce OIG) the documentation (indirect cost proposal, cost allocation plan, etc.) necessary to establish such rates within the Recipient's fiscal year during which indirect costs will be charged against RLF Income. If the documentation is not submitted during this time period, charges of indirect costs against RLF Income will be unallowable and cannot be carried forward, unless the OIG determines there is a finding of good and sufficient cause to excuse the Recipient's delay in submitting the documents.

.08 *Additional Funding and/or Extension of Award*: The Government has no obligation to provide any additional funding in connection with this award. Any renewal of this award to increase funding or to extend the period of performance is at the sole discretion of the Government.

.09 *Debts*: a. Any debts determined to be owed the Federal Government shall be paid promptly by the Recipient. A debt will be considered delinquent if it is not paid within 30 days of the due date. If the debt is not paid by the stated due date, the Recipient shall be

subject to late payment charges imposed by the Federal Government. The late payment charges are as follows:

1. Interest charge on the delinquent debt. As established by the Debt Collection Act of 1982, the minimum annual rate to be assessed is the Department of the Treasury's Current Value of Funds Rate. The interest charge shall accrue from the date of the letter which notifies the debtor of the debt and the interest requirements. This rate is published in the FEDERAL REGISTER by the Department of the Treasury. The assessed rate shall remain fixed for the duration of the indebtedness;

2. A penalty charge on any portion of a debt that is delinquent for more than 90 days, although the charge will accrue and be assessed from the date the debt became delinquent; and

3. An administrative charge to cover processing and handling of the amount due.

b. State and local governments are not subject to subparagraphs .11 a.2 and 3 above.

c. Once an account receivable has been established or a repayment agreement to pay the debt has been approved, failure to pay the debt by the due date on the billing may result in the suspension of payments to the Recipient under any current Department of Commerce awards and/or placement of the Recipient on a Reimbursement *Only* by Treasury Check method of payment until the debt is paid.

d. If a debt is over 30 days old, any Department of Commerce awards to the Recipient may be suspended and the Recipient may be suspended or debarred from further Federal financial and non financial assistance and benefits, as provided in 15 CFR Part 26, until the debt has been paid in full or until a repayment agreement has been approved and payments are made in accordance with the agreement. Failure to pay the debt or establish a repayment agreement by the due date will also result in the referral of the debt for collection action.

e. Payment of the debt may not come from other Federally sponsored programs. Verification that other Federal funds have not been used will be made during future program visits and audits.

.10 *Interest-Bearing Accounts:* All RLF grant funds disbursed to reimburse Recipients for loan obligations already incurred must be held in interest bearing accounts until disbursed to the borrower. In the event that a loan disbursement is delayed beyond 30 days from the date of receipt of the Federal disbursement, the undisbursed funds must be returned to the Government for credit to the Recipient's account. Interest earned on prematurely withdrawn funds must be returned to the Government (with the exception of \$100 per year which may be retained for administrative expenses by states, local governments and Indian tribes

per 15 CFR Part 24, and \$250 for those subject to OMB Circular A-110 or its implementing Department regulation) and shall be remitted promptly, but no less frequently than quarterly. All checks submitted should state "EDA" on their face and the award number followed by the word INTEREST in order to identify the check in question as remittance of interest income. Checks will be sent to the address below: Economic Development Administration, P.O. Box 100202, Atlanta, Georgia 30384.

.11 *Bonding and Payment of Funds:* Prior to payment of funds hereunder, the Recipient shall provide evidence to the Government that it has fidelity bond coverage of persons authorized to handle funds under this award in an amount determined by the Government sufficient to protect the interests of the RLF and the Government.

.12 *Grant Violations and Ineligible Costs:* The Recipient hereby agrees that the Government may, at its option, withhold disbursement of any award funds if the Government learns, or has knowledge, that the Recipient has failed to comply in any manner with any provision of the award. The Government will withhold funds until the violation or violations have been corrected to the Government's satisfaction. The Recipient further agrees to reimburse the Government for any ineligible costs which were paid from award funds. If a violation occurs or an ineligible expenditure is made subsequent to full disbursement of the grant, the Government, at its option, may elect to have the Recipient repay the RLF for the amount of any ineligible cost incurred. Failure to remedy an ineligible expenditure or grant violation will be grounds for suspension and/or termination.

F. REPORTING REQUIREMENTS

Financial and Performance Reports must be submitted according to the schedule indicated below. Failure to submit required reports in a timely manner may result in (1) withholding payments under this award, (2) deferring the processing of new awards, amendments, or supplemental funding pending the receipt of the overdue report(s), (3) establishing an account receivable for the difference between the total Federal share of Outlays last reported and the amount disbursed, and/or, (4) suspending or terminating the grant in whole, or in part.

.01 *Financial and Performance Reports:* The Recipient shall submit financial and status reports to the EDA Regional Office semi-annually unless otherwise instructed by the Government. The reports will be in a form prescribed by the Government and shall be submitted for a minimum of one year following full disbursement of the grant. Subsequently, the Recipient may be eligible for graduation to a shortened, annual reporting

format at the discretion of the Federal Program Officer. Graduation to the annual report will be based on an assessment of the Recipient's track record and on current RLF operations. The Recipient must obtain written authorization from the Government to convert to the annual reporting option.

Subsequently, the Recipient shall submit annual reports for the duration of the RLF unless the Federal Program Officer determines that more frequent and/or detailed reporting is necessary due to grant violations or other problems. Following remedial action, the Recipient may request the Federal Program Officer to convert back to annual reporting.

a. *Initial Semiannual Report:* Except for recapitalization awards, the Recipient shall submit the initial semiannual report on April 30, covering loan activity for the period ending March 31, (if the grant was awarded from April 1, through September 30), and on October 31, covering loan activity for the period ending September 30, (if the grant was awarded from October 1, through March 31).

b. *Subsequent Semiannual Reports:* Following the initial report, other than for recapitalization awards, the Recipient shall submit subsequent semiannual reports on either April 30, or October 31, covering RLF activity for the periods ending March 31, and September 30, respectively.

c. *Annual Reports:* If authorized by the Government, the Recipient shall submit annual reports in place of semiannual reports as instructed by the Government.

d. *Performance Measures:* The Recipient agrees to submit to EDA as part of the semiannual or annual reports referenced in F.01. (a.), (b.) and (c.) above, the information identified as the Core Performance Measures listed below. EDA will advise the Recipient in writing, not less than 90 days prior to the time for submission, in the event there are any modifications in the information required to be submitted.

A. Performance and Outcomes at the Completion of the Initial Round of Funding¹

- Compliance with implementation schedule for disbursement of RLF dollars.
- Jobs created and saved (actual) through RLF loans.
 - Number of loans made by the RLF.
 - Non-RLF dollars leveraged by the RLF loan.
 1. Private sector dollars.
 2. Other dollars leveraged.
 - RLF Capital Base (total RLF funding + program income – loan writeoffs).

¹Full disbursement of the grant award.

B. Project Outcomes after Full Disbursement of Grant

- Jobs created and saved (actual) through RLF loans.
- Number of loans made by the RLF.
- Non-RLF dollars leveraged by the RLF loan.
 1. Private sector dollars.
 2. Other dollars leveraged.
- RLF Capital Base (total RLF funding + program income – loan writeoffs).

.02 *Other Reports:* The Recipient agrees to submit other reports, as may be required from time to time, to the Government.

.03 *Subcontracting Reports:* Recipients of awards which involve both Federal financial assistance valued at \$500,000 or more and procurement of supplies, equipment, construction or services shall be required to submit the SF-334, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements, and Other Federal Financial Assistance." Reports shall be submitted on a quarterly basis for the period ending March 31, June 30, September 30, and December 31. Reports are due no later than 30 days following the end of the reporting period during which any procurement in excess of \$10,000 is executed under this award. The report should be submitted in duplicate to the EDA Regional Office.

G. ADMINISTRATIVE COST AND LOAN RECORDS RETENTION

.01 *Administrative Cost Records:* Records of administrative costs incurred for activities relating to the operation of the RLF shall be retained for three years from the actual submission date of the last Semiannual or Annual Report which covers the period during which such costs were claimed, or for five years from the date the costs were claimed, whichever is less. The retention period for records of equipment acquired in connection with the RLF shall be three years from the date of disposition, replacement, or transfer of the equipment.

.02 *Loan Records:* Loan files and related documents and records shall be retained over the life of the loan and for a three year period from the date of final disposition of the loan. The date of final disposition of the loan is defined as the date of: (1) full payment of the principal, interest, fees, penalties, and other fees or costs associated with the loan; or (2) final settlement or write-off of any unpaid amounts associated with the loan.

.03 *General:* If any litigation, claim, negotiation, audit or other action involving the RLF or its assets has commenced before the expiration of the three-year (or five-year) period, all administrative and program records pertaining to such matters shall be retained until completion of the action and the resolution of all issues which arise from it, or

until the end of the regular three-year (or five-year) period, whichever is later.

The record retention periods described in this section (Administrative Cost and Loan Records Retention) are minimum periods and such prescription is not intended to limit any other record retention requirement of law or agreement. Any records retained for a period longer than so prescribed shall be available for inspection the same as records retained as prescribed. In any event, EDA will not question administrative costs claimed more than three years old, unless fraud is an issue.

H. AUDIT

The Inspector General of the Department of Commerce, or any of his or her duly authorized representatives, shall have access to any pertinent books, documents, papers and records of the Recipient, whether written, printed, recorded, produced or reproduced by any mechanical, magnetic or other process or medium, in order to make audits, inspections, excerpts, transcripts or other examinations as authorized by law.

.01 Requirements: a. Federal Audit: Under the Inspector General Act of 1978, as amended, 5 USC App. I, section 1 *et seq.*, an audit of this award may be conducted at any time. The Office of Inspector General usually will make the arrangements to audit this award, whether the audit is performed by Inspector General personnel, an independent accountant under contract with the Department, or any other Federal, State or local audit entity.

b. *Recipient Audit:* 1. For awards to institutions of higher education, and other non-profit organizations, the Recipient is subject to the audit requirements found at 15 CFR Part 29b; for awards to governmental entities, the Recipient is subject to the audit requirements found at 15 CFR Part 29a.

2. Any audit report performed in compliance with the requirements of 15 CFR Part 29a or Part 29b shall be sent to the cognizant Federal agency and to the Federal Program Officer. A copy of the transmittal letter to the cognizant Federal agency should be provided to the Grants Officer. If the Department of Commerce is the cognizant Federal agency, the audit report should be sent to the following address: Federal Audit Clearinghouse, Bureau of the Census, 1201 East 10th Street, Jeffersonville, Indiana 47132.

c. For awards where a special award condition stipulates that an audit be conducted of this particular award, the Recipient shall arrange for an audit of the award in accordance with Governmental auditing standards.

.02 Establishment and Collection of Audit-Related Debts: a. An audit of this award may result in the disallowance of costs incurred by the Recipient and the establishment of a debt (account receivable) due the Government. For this reason, a Recipient should

take seriously its responsibility to respond to all audit findings and recommendations with adequate explanations and supporting evidence whenever audit results are disputed and the Recipient has the opportunity to comment.

b. A Recipient whose award is audited has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt:

1. Unless the Inspector General determines otherwise, the Recipient will be given 30 days from the transmittal of the *draft* audit report in which to submit written comments and documentary evidence.

2. The Recipient will be given 30 days from the transmittal of the *final* audit report in which to submit written comments and documentary evidence. There will be no extension of this deadline. Based on all of the evidence available at the expiration of this time period, the Department will make a decision on the actions it will take as a result of the final audit report.

3. The Government's decisions to disallow costs under the award and to establish a debt (as well as its decisions on non financial issues) will be sent to the Recipient in an Audit Resolution Determination letter. The Recipient will be given 30 days from the transmittal of this letter in which to pay any debt. This letter will contain information on the procedures to be followed by the Recipient to appeal the Department's decisions. An appeal does not preclude the Recipient's obligation to pay the debt nor does the appeal preclude the accrual of interest on the debt. The appeal must be submitted to the Grants Officer and the Office of Inspector General within 30 days after receipt of the Audit Resolution Determination letter. There will be no extension of this deadline. This appeal is the last opportunity for the Recipient to submit to the Department arguments and evidence that dispute the validity of the audit-related debt.

4. After the opportunity to appeal has expired, or after the final decision on reconsideration has been made, the Department will not accept any submissions from the Recipient concerning its dispute of the Department's decisions on the settlement of costs under the award. If the debt is not paid, the Department will undertake other collection action but will not thereafter reconsider the legal validity of the debt.

c. There are no other administrative appeals available in the Department of Commerce concerning this matter.

I. MISCELLANEOUS ITEMS

.01 Programmatic Changes: All requests by the Recipient for programmatic changes must be submitted to the Government which will notify the Recipient in writing of the determination.

.02 Name Check Review:

a. A name check review shall be performed by the Office of Inspector General on key individuals associated with non profit organizations. b. The Department reserves the right to take any of the actions described in subparagraph H.02 c. below if one of the following occurs as a result of the name check review:

1. Any of the key individuals associated with non profit organizations who are not exempt from the name check review fails to submit the Form CD-346 and, if required, the Form FD-258;

2. The Recipient, key individual, or any other person associated with this award made an incorrect statement or omitted a material fact on the Form CD-346 or Form FD-258; or

3. Significant adverse findings result from the name check review that reflect on the integrity or responsibility of the Recipient and/or key individual.

c. In the event of significant adverse findings from the name check review, the Government, at its discretion, may take one or more of the following actions:

1. Terminate the award immediately for cause;

2. Require the removal from association with the management of and/or implementation of the Project any person or persons and, if appropriate, require that the Grants Officer be afforded the right of final approval of any person or persons to replace any individual removed as a result of this condition; and/or

3. Make appropriate provisions or revisions at the Government's discretion with respect to method of payment and/or financial reporting requirements.

.03 Prohibition Against Assignment: Notwithstanding any other provision of this award, the Recipient shall not transfer, pledge, mortgage, or otherwise assign this award, or any interest therein, or any claim arising thereunder, to any party or parties, bank trust companies, or other financing or financial institutions.

.04 Covenant Against Contingent Fees: Unless otherwise specified in the Special Award Conditions, the Recipient warrants that no person or selling agency has been employed or retained to solicit or secure this award upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial, or selling agencies maintained by the Recipient for the purpose of securing business. For breach or violation of the warrant, the Government shall have the right to cancel this award without liability or, at its discretion, to deduct from the award sum, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

.05 Officials Not To Benefit: No member of or delegate to Congress or resident Federal

Commissioner shall be admitted to any share or part of this award or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this award if made to a corporation, education, or non-profit institution for its general benefit.

.06 Sub-Award and/or Contract to Other Federal Agencies: a. The Recipient, sub-recipient, contractor and/or subcontractor shall not sub-grant or subcontract the Project in whole or in any part to any agency of the Department of Commerce.

b. The Recipient, subrecipient, contractor and/or subcontractor, shall not sub-grant or subcontract any part of the Project to any other Federal department, agency or instrumentality, without the advance written approval of the Grants Officer.

.07 Property Management: The Recipient may utilize RLF Income generated from loan activities to acquire property necessary to administer the RLF. Neither grant funds nor match funds shall be used to purchase property for RLF administration. RLF Income (defined in Section E.06) can only be used to acquire necessary RLF property to the extent of the benefits received.

Eligible property for RLF activities will normally include (1) Expendable Personal Property (which includes all tangible personal property, including supplies, other than nonexpendable property), and (2) Non-expendable Personal Property (which includes tangible personal property, including equipment).

Title to Expendable and Nonexpendable Personal Property acquired in whole or in part with RLF Income for use in the RLF shall vest with the Recipient. The Recipient shall not encumber its title or other interests in RLF property without prior written approval from the Government. The Recipient shall use and manage nonexpendable personal property as long as needed and shall maintain nonexpendable personal property records, control systems and physical inventories.

a. Disposition of Personal Property: In the ordinary course of business, the Recipient may dispose of personal property for upgrading purposes or when no longer needed for the project activity. The RLF's share of the proceeds from any disposition shall be treated as a contribution to RLF Income and may be returned to the RLF for lending or used for RLF administrative expenses.

b. Disposition of Expendable and Non-expendable Property Under RLF Termination: If the RLF is terminated, the Recipient shall submit a request for disposition instructions to the Federal Program Officer who shall provide the Recipient with disposition instructions. Disposition may include one of the following:

1. If the total aggregate fair market value of unused personal property at the termination of the RLF is \$1,000 or less for awards

subject to OMB Circular A-110 or any Department rule superseding such Circular, or \$5,000 or less for awards subject to 15 CFR Part 24 and is not needed for any other Federally-sponsored project or program, the Recipient may retain or sell the expendable personal property without compensating the Government.

2. If the total aggregate fair market value of personal property at the termination of the award exceeds \$1,000 for awards subject to OMB Circular A-110 or any Department rule superseding such Circular, or \$5,000 for awards subject to 15 CFR Part 24 and is not needed for any other Federally-sponsored project or program, the Recipient may retain, sell, or otherwise dispose of the property and shall compensate the Government for its share.

3. The following apply only to the disposition of nonexpendable personal property:

(a) The Recipient shall submit a completed form CD-281, "Report of Government Property in Possession of Contractor" along with the request for disposition instructions.

(b) The Government's disposition instructions may additionally include the following: (1) The Recipient may be instructed to ship the nonexpendable personal property elsewhere. The Recipient may receive the non-federal share of the market value plus shipping costs; or (2) for awards subject to the provisions of OMB Circular A-110 or Department regulation superseding such Circular, the Government reserves the right to transfer title to the Federal Government or to a third party named by the awarding agency if the nonexpendable personal property had a unit acquisition cost of \$1,000 or more. For awards subject to 15 CFR Part 24, the Government reserves the right to transfer title to the Federal Government or to a third party named by the awarding agency for any nonexpendable personal property. When title is transferred, the Recipient shall be compensated for its share.

c. **Disposition of Real Property Under RLF Termination:** If the RLF is terminated and the Recipient holds title to real property through foreclosure or other legal actions, the Recipient shall request disposition instructions from the Regional Program Officer. Disposition may include one of the following:

1. The Recipient shall retain title after it compensates the Federal Government for its share;

2. The Recipient shall sell the property and pay the Federal Government for its share after the deduction of any actual and reasonable selling and fix-up expenses, if any, from the sales proceeds; or

3. The Recipient shall transfer title to the property to the Federal Government provided that in such cases the Recipient shall be entitled to compensation computed by applying the Recipient's percentage of partici-

pation in the cost of the project to the current fair market value of the property.

d. **Debt Instruments Under RLF Termination:** If the RLF is terminated, the Recipient shall request disposition instructions from the Regional Program Officer for disposition of debt instruments in the RLF portfolio.

.08 **Rights to Inventions Made by Nonprofit Organizations and Small Business Firms:** The policy and procedures set forth in Department of Commerce regulations 37 CFR Part 401, Rights to Inventions made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements, published in the FEDERAL REGISTER on March 18, 1987, shall apply to all grants and cooperative agreements made where the purpose is experimental, developmental, or research work.

Pursuant to Executive Order 12899, the Department is required to notify the owner of any valid patent covering technology whenever the Department or its financial assistance Recipients, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner.

To ensure proper notification, if the Recipient uses or has used patented technology under this award without a license or permission from the owner, the Recipient must notify the Department Patent Counsel at the following address, with a copy to the Grants Officer: U.S. Department of Commerce, Office of Chief Counsel for Technology, Patent Counsel, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

The notification shall include the following information:

a. The award number.

b. The name of the Department awarding agency.

c. A copy of the patent.

d. A description of how the patented technology was used.

e. The name of the Recipient contact, including an address and telephone number.

.09 **Executive Order 12432, Minority Business Enterprise:** In support of Executive Order 12432, signed by the President on July 14, 1983, the Department of Commerce encourages all Recipients to utilize minority firms and enterprises in contracts under grants and cooperative agreements. The Office of Program Development, Minority Business Development Agency, will assist Recipients in matching qualified minority enterprises with contract opportunities. For further information contact: U.S. Department of Commerce, Minority Business Development Agency, Office of Program Development, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

.10 Internal Revenue Service (IRS) Information: a. A Recipient classified for tax purposes as an individual, partnership, proprietorship, or medical corporation is required to submit a taxpayer identification number (TIN) (either social security number or employer identification number as applicable) on Form W-9, "Payer's Request for Taxpayer Identification Number."

Tax-exempt organizations and corporations (with the exception of medical corporations) are excluded from this requirement. The Recipient should submit the form to the Grants Officer within 60 days of the effective date of award.

The Department provides the Recipient's TIN to the IRS on Form 1099-G, "Statement for Recipients of Certain Government Payments." Applicable Recipients who either fail to provide their taxpayer identification number or provide an incorrect number may not be eligible for funding or have funding suspended until the requirement is met.

b. Privacy Act Statement—Mandatory Disclosure, Authority, Purpose, and Uses: Disclosure of your social security number or employer identification number is mandatory for Federal income tax reporting purposes under the authority of 26 U.S.C., Section 6011 and 6109(d), and 26 CFR Part 301, Section 301.6109-1. This is to ensure the accuracy of income computation by the Internal Revenue Service. This information will be used to identify an individual who is compensated by funds of the Department of Commerce or paid interest under the Prompt Payment Act. A Recipient who either fails to provide the taxpayer identification number or provides an incorrect number may not be eligible for funding or have funding suspended until requirement is met. This information is being provided to the Internal Revenue Service on Form 1099.

.11 Government wide Debarment, Suspension and Other Responsibility Matters (Nonprocurement): a. This award is subject to Executive Order 12549, Debarment and Suspension, and 15 CFR Part 26, "Government wide Debarment and Suspension (Nonprocurement)." A person (as defined at 15 CFR §26.105(n)) who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities except to the extent prohibited by law or authorized in writing by the Department.

b. The Recipient shall provide immediate notification to the Grants Officer if at any time the Recipient learns that its certification, Form CD-511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," was erroneous when submitted or has become erroneous by reason of changed circumstances. Subrecipients in lower tier transactions shall provide the same updated notice to the Recipient.

c. Unless the Department authorizes in writing an exception in accordance with 15 CFR §§26.215, 26.220, and/or 26.625, the Recipient of this award shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. The Recipient shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in 15 CFR Part 26.215. Violation of this restriction may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies, as appropriate.

d. The Recipient shall require each applicant/bidder for a lower tier covered transaction (except subcontracts for goods or services under the \$100,000 small purchase threshold unless the subtier Recipient will have a critical influence on or substantive control over) at any tier under this award to file a certification, Form CD-512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying," without modification, for it and its principals in any proposal/solicitation submitted in connection with the lower tier covered transaction. Certifications shall be retained by the Recipient.

e. The Recipient shall include the following provisions regarding debarment and suspension in all subtier covered transactions:

1. This lower tier covered transaction is subject to Executive Order 12549, "Debarment and Suspension," and 15 CFR Part 26, "Government wide Debarment and Suspension (Nonprocurement)." Unless authorized by the Department in writing, a person (as defined at 15 CFR §26.105(n)) who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities except to the extent prohibited by law or authorized by the Department.

2. Unless the Department authorizes in writing an exception in accordance with 15 CFR §§26.215, 26.220, and/or 26.625, the Recipient of this lower tier covered transaction shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. The Recipient of this sub-award shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in 15 CFR §26.215.

f. The Recipient shall include the following provision in each application and in each bid

for a lower tier covered transaction at any tier under this award:

Each applicant/bidder for a lower tier covered transaction (except subcontracts for goods or services under the \$100,000 small purchase threshold unless the subtier Recipient will have a critical influence on or substantive control over the award) at any tier under this Federal award must file Form CD-512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying," without modification, at the time of application/bid.

Applicants/bidders should review the instructions for certification included in the regulations before completing the certification. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Certifications shall be retained by the Recipient.

12 Restrictions on Lobbying (applicable to awards exceeding \$100,000 in Federal funding):
a. This award is subject to Section 319 of Public Law 101-121, which added Section 1352, regarding lobbying restrictions, to Chapter 13 of Title 31 of the United States Code as implemented by 15 CFR Part 28. The Recipient of this award and subrecipients are generally prohibited from using Federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with this award.

b. The Recipient shall require each person who requests or receives from the Recipient a sub-grant, contract, or subcontract exceeding \$100,000 of Federal funds at any tier under this award, to file Form CD-512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying," without modification, and, if applicable, SF-LLL, "Disclosure of Lobbying Activities," form regarding the use of any non-federal funds for lobbying. Certifications shall be retained by the next higher tier. All disclosure forms, however, shall be forwarded from tier to tier until received by the Recipient, who shall forward all disclosure forms to the Grants Officer.

c. The Recipient shall include the following provision in all contracts, subcontracts, or sub-grants:

This contract, subcontract, or sub-grant is subject to Section 319 of Public Law 101-121, which added Section 1352, regarding lobbying restrictions, to Chapter 13 of Title 31 of the United States Code as implemented by 15 CFR Part 28. Each bidder/applicant/recipient of this contract, subcontract, or sub-grant and subrecipients are generally prohibited from using Federal funds for lobbying the

Executive or Legislative Branches of the Federal Government in connection with this award.

d. The Recipient shall include the following contract clauses regarding lobbying in each application for a sub-grant and in each bid for a contract or subcontract exceeding \$100,000 of Federal funds at any tier under the Federal award:

Each applicant/recipient of a subgrant and each bidder/applicant/recipient of a contract or subcontract exceeding \$100,000 of Federal funds at any tier under the Federal award must file Form CD-512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying," and Standard Form-LLL, "Disclosure of Lobbying Activities," regarding the use of any nonfederal funds for lobbying. Certifications shall be retained by the next higher tier. All disclosure forms, however, shall be forwarded from tier to tier until received by the Recipient of the Federal award, who shall forward all disclosure forms to the Grants Officer.

Each subgrantee, contractor, or subcontractor that is subject to the Certification and Disclosure provision of this Contract Clause is required to file a disclosure form within 15 days of the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person. Disclosure forms shall be forwarded from tier to tier until received by the Recipient of the Federal award (grant), who shall forward all disclosure forms to the Grants Officer.

APPENDIX C TO PART 308—SECTION 209 ECONOMIC ADJUSTMENT PROGRAM REVOLVING LOAN FUND GRANTS; AD- MINISTRATIVE MANUAL

OMB Approval No. 0610-0095

Approval expires 07/31/99

BURDEN STATEMENT FOR REVOLVING LOAN FUND ADMINISTRATIVE MANUAL:

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

The information is required to obtain or retain benefits from the Economic Development Administration pursuant to Economic Development Administration Reform Act, Public Law 105-393. No confidentiality for the information submitted is promised or provided except that which is exempt under

5 U.S.C. 552(b)(4) as confidential business information.

The public reporting burden for this collection is estimated to average 12 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Economic Development Administration, Herbert C. Hoover Building, Washington, DC, 20230, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

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I. PURPOSE

This Manual describes the compliance, reporting, grant record keeping and other administrative requirements and procedures that apply to Revolving Loan Fund (RLF) grants funded by the Economic Development Administration (EDA) under Section 209 of the Public Works and Economic Development Act of 1965, as amended. These requirements apply to new RLFs and to the future actions of all RLFs funded prior to the Manual's effective date. The requirements apply to RLFs funded under the Sudden and Severe Economic Dislocation (SSED) and the Long-Term Economic Deterioration (LTED) components of Section 209. They also apply to the revolving phases of RLFs funded for the initial purpose of providing financing to one or more identified business firms.

II. AUTHORITY

A. Grant Recipients as Trustees: Recipients of EDA grants to operate RLFs hold RLF funds in trust to serve the purpose of the Economic Adjustment program for which the grant award was made. The grant recipient's obligation to the Federal Government continues as long as the Federal interest in EDA RLF assets, in the form of cash, receivables, personal and real property, and notes or other financial instruments developed through the use of the funds, continues to

exist. If EDA determines that a grant recipient is failing to meet this obligation, the Agency will assert its equitable reversionary interest in the RLF assets. However, EDA's nonassertion of its interest does not constitute a waiver thereof.

B. Grantor Authority to Change Policies: EDA, as the Federal agency charged with implementing the program, is obligated to promulgate policies and procedures applicable to all RLF grant recipients to insure compliance with Federal requirements, to safeguard the public's interest in the grant assets, and to promote effective use of the funds in accomplishing the purpose for which they were granted.

Pursuant to this obligation, grant terms and conditions require grant recipients to comply with changes in regulations and other requirements and policies that EDA may issue from time-to-time. Such changes apply to actions taken by all grant recipients, existing and prospective, after the effective date of the changes. Loans made by grant recipients prior to the effective date of the changes are not affected unless so required by law.

As a matter of policy, EDA will subject proposed RLF changes to public review when practicable.

EDA's policy is to administer RLF grants uniformly, but it is understood that there may be situations warranting a variance. To accommodate these situations and to encourage innovative and creative ways to address economic adjustment problems, requests for variances to the requirements of this Manual will be considered if they are consistent with the goals of the Section 209 program and with an RLF's strategy, make sound economic and financial sense, and do not conflict with applicable legal requirements.

C. Precedence of Grant Documents and Published Regulations: The Grant Award, executed by EDA and the recipient, together with the Budget, Special Terms and Conditions and the Standard Terms and Conditions, as may be amended, and the current regulations, published at 13 CFR Part 308, constitute the requirements, hereinafter referred to as "Terms and Conditions," applicable to an EDA RLF grant. This Manual is designed to clarify and administratively implement those requirements. In the event of conflict, the aforementioned documents take precedence over this Manual.

III. GRANTEE RESPONSIBILITIES

A. Prudent Lending Practices: RLF grant recipients are required to operate RLFs in accordance with lending practices generally accepted as prudent for public loan programs. Such practices cover loan processing, documentation, servicing and administrative procedures, as outlined in the current RLF Plan Guidelines.

B. Protection of RLF Assets: RLF grant recipients are required (1) to obtain adequate and appropriate collateral from borrowers, and (2) to act diligently to protect the interests of the RLF, through collection, foreclosure, or other recovery actions on defaulted loans.

C. Federal Requirements Applicable to Grant Recipients: Grant recipients are responsible for complying with the Federal laws and regulations, Executive Orders and Office of Management and Budget (OMB) Circulars which are referenced in the Terms and Conditions, as may be amended, for RLF grants. These include administrative and audit requirements, cost principles, and other laws, regulations and Executive Orders pertaining to requirements from civil rights to lobbying restrictions.

D. Federal Requirements Applicable to RLF Borrowers: Grant recipients are responsible for ensuring that prospective borrowers are aware of, and comply with, the Federal statutory and regulatory requirements that apply to activities carried out with RLF loans. The most common of these requirements relate to environmental protection, civil rights, Davis-Bacon wage rates and handicap access on construction projects, and the prohibited use of RLF funds for businesses that relocate jobs from one commuting area to another.

Grant recipients are responsible for developing an appropriate review process in accordance with the intent of the National Environmental Policy Act of 1969, (P.L. 91-190) as amended, as implemented by the "Regulations" of the President's Council on Environmental Quality. The process shall include disapproval of loan projects which would adversely (without mitigation) impact floodplains, wetlands, significant historic or archeological properties, drinking water resources, or nonrenewable natural resources. Grant recipients are also responsible for openly marketing the RLF to prospective minority and women borrowers, and monitoring borrower compliance with civil rights requirements that prohibit borrowers from discriminating against employees or applicants for employment, or providers of goods and services. These and the other Federal requirements described in the Terms and Conditions of each grant should be included, as applicable, in each RLF's standard loan agreement to ensure borrower compliance where necessary. Grant recipients are expected to act diligently to correct instances of noncompliance, including the recall of loans, if necessary.

IV. REVOLVING LOAN FUND RESTRICTIONS

The following restrictions apply generally to RLFs:

A. Lending Area Restrictions

1. *Eligible Lending Area:* The economic activity and the benefits of RLF loans must be located within the eligible areas identified in the grant award.

2. *Modification of the Eligible Area:* Areas within the operational jurisdiction of the grant recipient that were not identified in the grant award, but that meet or may subsequently meet the Agency's criteria for eligibility under Section 209, may qualify to be added to an RLF's eligible lending area. To ascertain qualification, a grant recipient must make a written request to EDA to determine whether a new area is eligible for assistance under existing grant terms. Area eligibility data are updated quarterly and eligibility lists are maintained by EDA's Regional Offices. Unless stipulated otherwise in the grant award, once an area's eligibility is approved by EDA, that area retains its eligibility indefinitely.

3. *Recapitalization Rule:* If EDA funds are used to recapitalize an existing RLF, the new grant funds may be used only in areas eligible for assistance at the time the recapitalization grant is invited (and in areas that become eligible between the time of invitation and the grant award). Areas that were eligible under the previous EDA grant award but not under the new award may continue to receive RLF assistance under the previous grant award only. Areas which become eligible subsequent to the grant award require EDA approval as discussed above in Section IV.A.2.

If a grant recipient has received EDA funds to recapitalize an existing RLF and the respective grants serve different eligible lending areas, the grant recipient is responsible for maintaining adequate accounting records to substantiate that each grant is being used in the appropriate eligible lending area.

B. Borrower Restrictions

1. *Eligible Lending Area:* An RLF borrower must retain the activity financed in the eligible lending area for the term of the loan. The RLF's standard loan agreement should include a provision to call the loan if the activity financed is moved from the eligible lending area.

2. *Relocation:* RLF financing may not be used by a borrower for any activity that serves to relocate jobs from one commuting area to another. This applies both to a business which uses RLF financing to relocate jobs into an eligible area from a different commuting area, and to a business which relocates jobs, created as a result of RLF financing, to a different commuting area. An RLF's standard loan agreement should include a provision for calling the loan if it is determined that (a) the business used the RLF loan to relocate jobs from another commuting area, or (b) the activity financed was

subsequently moved to a different commuting area to the detriment of local workers. The commuting area is that area defined by the distance people travel to work in the locality of the project receiving RLF financial assistance.

3. *Credit Otherwise Available:* A borrower is not eligible for RLF financing if credit is otherwise available on terms and conditions which would permit completion and/or the successful operation or accomplishment of the project activities to be financed. The grant recipient is responsible for determining that each borrower meets this requirement and for documenting the basis for its determination in the loan write-up. A loan write-up must include a discussion of the particular features of the local capital market and/or of the individual borrower or project to be financed that result in the need for RLF financing. It should also briefly describe the key aspects of the business and the loan including a discussion of the prospective borrower's ability to repay.

The grant recipient is also responsible for obtaining supplemental evidence, as appropriate, to support the need for RLF financing. This may include the following:

a. A commitment letter from a participating bank stating the loan terms, the maximum amount to be extended by the bank, and the need for the RLF's participation; and/or

b. Bank rejection letter(s), if obtainable, listing the proposed loan terms.

Exception to Credit Test: RLF financing may also be used as an incentive, through favorable loan terms, to attract a new business or a business expansion into an eligible area. The business may be credit worthy but would otherwise not locate in the area without RLF financing as an incentive. To undertake this type of project, the grant recipient must sufficiently document the need for RLF assistance and should obtain certification from the company, stating that it would not locate the proposed project at the intended location without RLF assistance. Grant recipients are cautioned that failure to document adequately the need for an RLF loan may be grounds for declaring a loan ineligible and requiring the grant recipient to repay any outstanding loan balance to the RLF, or return the Federal share to EDA.

4. *Public and Quasi-Public Borrowers:* A public or quasi-public organization is not eligible to receive RLF financial assistance unless (a) the activity financed directly benefits or will directly benefit identifiable business concerns, and (b) there is reasonable assurance that the activity financed will result in increased business activity in the near term.

5. *Private Developers:* Private developers are not eligible for RLF assistance unless the activity financed is non-speculative, consistent with the strategic and lending objectives of

the RLF, and directly benefits or will directly benefit identifiable business concerns.

6. *Other*: A grant recipient shall not use its RLF to make a loan to itself or to a related organization.

C. Financing Restrictions

1. Loans to a borrower for the purpose of investing in interest bearing accounts, certificates of deposit, or other investments not related to the objectives of the RLF are prohibited. To preclude ineligible uses of RLF funds, the purpose of each RLF loan should be clearly stated in the RLF loan agreement.

2. For initial RLF grants, the total dollar amount of loans for working capital purposes may not exceed 50% of the total RLF capital prior to the full disbursement of grant funds, unless otherwise stipulated in the grant agreement. ("RLF capital" consists of the funds which capitalized the RLF plus such earnings and fees generated by RLF activities as may be added to the RLF capital base to be used for lending.) For recapitalization grants and for initial grants after the grant funds are fully disbursed, the portfolio working capital percentage may, with EDA's prior written approval, exceed 50 percent. In reviewing requests to increase the 50 percent limit on working capital loans, EDA will consider, among other things, the grant recipient's experience with working capital loans and whether the request is consistent with the area's Economic Adjustment Strategy and the RLF Plan.

3. RLF capital may not be used to:

a. Acquire an equity position in a private business;

b. Subsidize interest payments on an existing loan;

c. Provide the equity contribution required of borrowers under other Federal loan programs;

d. Enable an RLF borrower to acquire an interest in a business, either through the purchase of stock or through the acquisition of assets, unless the need for RLF financing is sufficiently justified, and documented in the loan write-up (referenced in IV.B.3 above). Acceptable justification could include acquiring a business to substantially save it from imminent foreclosure or acquiring it to expand it with increased investment. In any case, the resulting economic benefits should be demonstrably consistent with the strategic objectives of the RLF;

e. Refinance existing debt unless:

(1) There is sound economic justification and the grant recipient sufficiently documents in the loan write-up that the RLF is not replacing private capital solely for the purpose of reducing the risk of loss to an existing lender(s) or to lower the cost of financing to a borrower, or

(2) An RLF uses RLF income sources and/or recycled RLF funds to purchase the rights of a prior lienholder during an in-process

foreclosure action in order to preclude a significant loss on an RLF loan. This action may be undertaken only if there is a high probability of receiving compensation within a reasonable time period (18 months) from the sale of assets sufficient to cover an RLF's expenses plus a reasonable portion of the outstanding loan obligation.

(Note: Since a grant recipient will be required to repay the amount of an ineligible loan, it is recommended that EDA be contacted for clarification or written confirmation if there is any question regarding either of the refinancing exceptions described above.)

4. Prior to full disbursement of grant funds, the grant recipient may not use the RLF to guarantee loans made by other lenders. In the revolving phase, after the full disbursement of grant funds, the RLF may be used to guarantee loans of private lenders provided the Recipient has obtained EDA's prior written approval of its proposed loan guarantee activities. The plan for any loan guarantee activities should include the following information:

a. The maximum guarantee percentage that will be offered;

b. A certification from the RLF attorney that the guarantee agreement is acceptable by local standards. At minimum, the guarantee agreement must include the following: the maximum reserve requirement; the rights and duties of each party in regard to loan collections, servicing, delinquencies and defaults; foreclosures; bankruptcies; collateral disposition and the call provisions of the guarantee; and interest income and loan fees, if any, which will accrue to the RLF.

D. Interest Rates

A grant recipient can make loans and loan guarantees to eligible borrowers at interest rates and under conditions determined by the Recipient to be most appropriate in achieving the goals of the RLF. However, the minimum interest rate an RLF can charge is four (4) percentage points below the current money center prime rate quoted in the Wall Street Journal or the maximum interest rate allowed under State law, whichever is lower, but in no event may the interest rate be less than four (4) percent. However, should the prime interest rate exceed fourteen (14) percent, the minimum RLF interest rate is not required to be raised above ten (10) percent if to do so would compromise the ability of the RLF to implement its financing strategy.

E. Private Leveraging

Unless stipulated otherwise in the grant agreement, RLF loans must be used to leverage private investment of at least two dollars for every one dollar of RLF investment. This leveraging requirement applies to the

portfolio as a whole rather than to individual loans and is effective for the life of the RLF. Private investment, to be classified as leveraged, must be made concurrently with an RLF loan as part of the same business development project and may include (1) capital invested by the borrower or others, (2) financing from private entities, and (3) 90 percent of the guaranteed portions of SBA 7(a) and SBA 504 debenture loans. Private investments do not include equity build-up in a borrower's assets or prior capital investments by the borrower unless made within nine months of the RLF loan and with the concurrence of the RLF Recipient. If a grant recipient can demonstrate that the 2:1 leverage requirement is too restrictive for its lending area and that it impedes the purpose for which the grant was made, it may request EDA to waive or modify the grant agreement.

V. RLF CAPITAL

A. RLF Capitalization

The original sources of capital for EDA RLFs are normally EDA grant funds and a nonfederal cash matching share. The EDA grant funds and the nonfederal matching funds can be used only for the purpose of making loans under an RLF, unless otherwise provided for in the grant agreement and grant budget, e.g., budgeted audit costs. Costs associated with the preparation of the grant application are not eligible expenses and are not reimbursable from the funds invested as RLF capital.

B. Nonfederal Matching Share

The grant agreement specifies the amount of nonfederal cash share required for an RLF grant. This is usually not less than 25% of the total RLF capital investment. The nonfederal share funds must be loaned either before or proportionately with EDA funds. Upon repayment, the nonfederal share funds are treated the same as EDA funds, repayments of principal must be placed in the RLF for relending and interest payments must be used either for relending or for eligible RLF administrative costs. The nonfederal matching share must be available when needed for lending and must be under the control of the grant recipient (or its designee) for the duration of the RLF for use in accordance with the terms of the grant.

C. Partial Termination and Deobligation

In the event that a portion of the EDA grant is terminated and deobligated (refer to Section XII. below) and is no longer available to a grant recipient due to its failure to meet the terms of a grant, the nonfederal matching share shall remain in the RLF unless otherwise specified in the grant agreement or agreed to in writing by EDA.

VI. RLF ADMINISTRATIVE COSTS

A. General Requirements

Grant recipients are responsible for the administrative costs associated with operating an RLF. Evidence of sufficient and reliable sources of funds to cover RLF administrative expenses is a key factor in project selection. As grant funds are disbursed for loans and an RLF begins to generate income from lending activities, such income (referred to as "RLF Income" and defined in Section VII.A.), as distinguished from principal repayments, may be used to cover eligible, reasonable, and documented administrative costs necessary to operate the RLF. When RLF Income is used for RLF administrative expenses, rather than added to the RLF capital base for lending, grant recipients are required to complete an RLF Income and Expense Statement as discussed in Section VII.C.2.

B. Auditing Costs

The grant budget accompanying the grant award lists the maximum amount of grant funds that may be used to defray the costs of audits required under the terms of the grant. In addition to funds budgeted in the grant award, audit costs may be reimbursed from RLF Income and from resources of the grant recipient. Audit costs are chargeable against the grant award if permitted in the grant budget and RLF Income to the extent that the costs charged are equitably distributed and reflect the benefits received. Grant funds budgeted for audit costs that are unused may be reallocated to the RLF capital base without EDA's permission. Additional information on grant audits is discussed in Section XI.B. and in EDA's Revolving Loan Funds Grants Audit Guidelines (RLF Audit Guidelines).

C. Other Eligible RLF Administrative Costs

Costs eligible for reimbursement from RLF Income must be consistent with the cost principles outlined in the appropriate OMB cost principle circular (OMB A-21, A-87 or A-122) and with the RLF Audit Guidelines. The requirements for using RLF Income are discussed in detail in Section VII.

Some of the common administrative costs that may be charged against RLF Income include RLF staff salaries and fringe benefits, RLF-related training, travel, marketing, general administration, business counseling and management assistance, portfolio management, materials and supplies, equipment rental and acquisitions prorated based on RLF usage, building rent, outside professional services, insurance, loan closing costs and the costs to protect collateral subsequent to foreclosure.

RLF administrative costs may be separated into direct and indirect costs. Direct

costs are those that can be identified specifically with a particular cost objective, such as an RLF program; indirect costs are those that are incurred for a common or joint purpose benefitting more than one program or cost objective and are not readily assignable. All costs charged against RLF Income must be supported by formal accounting records and source documentation. All indirect and joint costs charged against RLF Income must additionally be supported by a cost allocation plan approved by the cognizant Federal agency.

VII. RLF INCOME

A. Definition

RLF Income includes interest earned on outstanding loan principal, interest earned on accounts holding RLF funds not needed for immediate lending, all loan fees and loan-related charges received from RLF borrowers, and other income generated from RLF operations. (Note that the definition of RLF Income does not include repayments of loan principal because RLF principal repayments represent the return of capital and not "income". Consequently, RLF Income is a narrower definition of income than "program income" in the Uniform Administrative Requirements For Grants And Cooperative Agreements To State And Local Governments in 15 CFR Part 24.25, which includes principal repayments).

In accounting for RLF Income, any proceeds from the sale, collection, or liquidation of a defaulted loan, up to the amount of the unpaid principal, will be treated as repayments of RLF principal and placed in the RLF for lending purposes only. Any proceeds in excess of the unpaid principal will be treated as RLF Income.

B. Eligible Uses

While RLF Income can be used to pay for eligible and reasonable administrative costs as discussed above, RLF grant recipients are expected to add a reasonable percentage of RLF Income to the RLF capital base to compensate not only for loan losses and the effects of inflation over time, but also to maintain a minimum funding level for the future borrowing needs within the eligible lending area. To determine the appropriate amount of RLF Income to return to an RLF, RLF operators should consider the costs necessary to operate an RLF program, the availability of other monetary resources, the portfolio risk level and projected capital erosions from loan losses and inflation, the community's (or area's) commitment to the RLF, and the anticipated demand for RLF loans.

(Note: RLF Income that is not used for administrative purposes during the twelve month period in which it is earned must be added to the RLF capital base for lending purposes by the end of the twelve month pe-

riod (see Section VII.C.2. below for selection of the twelve month period). Only RLF Income earned during a current period may be used for current administrative expenses. RLF Income may not be withdrawn from an RLF in a subsequent period for any uses, other than lending, without the written consent of EDA.)

C. Administrative Requirements

Grant recipients electing to use RLF Income to cover all or part of a RLF's administrative costs must comply with the following provisions:

1. *Accounting Records:* Grant recipients must (a) maintain adequate accounting records and source documentation to substantiate the amount and percent of RLF Income expended for eligible RLF administrative costs, and (b) comply with applicable OMB cost principles and with the RLF Audit Guidelines when charging costs against RLF Income. Records must be retained by grant recipients for at least three years. If fraud is an issue, records must be retained until the issue is resolved.

2. *RLF Income and Expense Statement:* The Recipient must complete the RLF Income and Expense Statement (RLF Income Statement) located in Exhibit A, within 90 days of the twelve month period ending either September 30 or the Recipient's fiscal year end, whichever period is selected by the Recipient. The Recipient shall notify EDA of its selection in its first report to EDA. Once the period is selected, it may not be changed without prior written permission of EDA.

In lieu of completing an RLF Income Statement, the grant recipient may substitute information contained in an independent audit report provided it is in substance and in detail comparable to that provided in the RLF Income Statement. Should an audit report be used, the grant recipient will have to provide additional information certifying certain employee information requested in the RLF Income Statement.

3. *Reporting Requirements:* Grant recipients using fifty (50) percent or more or \$100,000 or more of RLF Income for RLF administrative expenses during the selected twelve month period must submit the completed RLF Income Statement to the EDA Regional Office within 90 days of the period ending date. Grant recipients whose RLF Income usage is under 50 percent and less than \$100,000 shall retain the RLF Income Statement for three years. The grant recipient shall make it available to EDA personnel upon request.

4. *Ineligible Costs:* For any costs determined by EDA to have been an ineligible use of RLF Income, the grant recipient shall reimburse the RLF or EDA. EDA will notify the grant recipient of the time period allowed for, and the manner in which to make, reimbursement.

VIII. REVOLVING LOAN FUND PLAN

A. Purpose

Grant recipients are required by the terms and conditions of the grant agreement to manage RLFs in accordance with an RLF Plan (Plan) generally approved prior to the grant award. The Plan serves two purposes. First, it summarizes how the RLF will be used to support implementation of the area's economic adjustment strategy, a statutory prerequisite to award of a Section 209 Implementation grant. Second, it documents the operating procedures established by the grant recipient to ensure consistent administration of the RLF in accordance with the Terms and Conditions of the grant and prudent public lending practices.

B. Format and Content

The Plan has two distinct parts. Part I, "The RLF Strategy," summarizes the area's economic adjustment strategy, including the business development objectives, and describes the RLF's financing strategy, policies and portfolio standards. Part II, "RLF Operating Procedures," serves as the internal operating manual for the RLF. The grant recipient is required to address a number of topics specifically identified by EDA, but otherwise has considerable discretion in designing and documenting operating procedures appropriate to the relative scale and complexity of its financing function. The required format and content for the two parts of the Plan are described in EDA's RLF Plan Guidelines.

C. EDA Approval

Unless specifically otherwise permitted by EDA, the Plan must be approved by EDA prior to the grant award.

D. Annual Plan Certification

Grant recipients are required to certify annually with the submission of the program report for the period ending September 30 (see Section XI.A), that the RLF loan board and the grant recipient's governing board have reviewed the RLF's performance for the preceding year relative to the area's adjustment strategy and the RLF Plan and have determined that:

1. The RLF Plan is consistent with and supportive of the area's current economic adjustment strategy; and
2. The RLF is being operated in accordance with the policies and procedures contained in the RLF Plan, and the loan portfolio meets the standards contained therein.

With the exception of States, the certification should normally be in the form of a resolution passed by the grant recipient's governing board. Certification by State grantees should be by an authorized State official.

E. Plan Modifications

Approval of modifications to Part I of the Plan may be requested at any time the grant recipient or EDA determines that the Plan is either outdated relative to the current adjustment needs and objectives of the area or specific lending policies and/or requirements are impeding effective use of the RLF as a strategic financing tool. Prerequisites for EDA's consideration of proposed modifications to Part I of the Plan include the following:

1. When the modification request is based on a significant redirection of an area's economic adjustment strategy, it must be accompanied by a copy of the current strategy. The strategy submitted must:

- a. Have been prepared or reviewed and updated, as necessary and appropriate, within the last 12 months by the grant recipient or area organization responsible for its preparation and maintenance;

- b. Address, for the purposes of EDA, the same geographic/jurisdictional area covered by the original strategy, unless the eligible area has been/is being expanded as provided for by the terms and conditions of the grant;

- c. Include the information specified in EDA's current guidelines for preparing and documenting an economic adjustment strategy, including evidence of the continuing need for the RLF; and

- d. Provide sufficient evidence that the proposed modifications are necessary and justified.

2. When the proposed modification is designed to permit more effective use of RLF financing in support of its unchanged strategic objectives, the grant recipient must submit adequate written justification for the proposed change(s). Submission of a current adjustment strategy is not required.

3. Certification that the proposed revisions are consistent with EDA policy and do not violate the terms and conditions of the grant.

4. Certification that the purpose and scope of the RLF as a financing tool for supporting implementation of the area's economic adjustment strategy remain unchanged.

5. Certification that prudent management of the RLF assets would not be compromised.

Grant recipients funded prior to the effective date of this Manual are encouraged but not required, unless determined otherwise by EDA, to comply with the new RLF Plan format when modifying any part of their plan.

Operational procedures, as documented in Part II of the Plan, so long as consistent with EDA requirements and the terms and conditions of the grant award, may be modified with the approval of the grant recipient's governing board. A copy of any revisions to Part II should be submitted for the EDA file within 30 days of approval. For

grant recipients other than States, Plan modifications should be approved by resolution of the organization's governing board.

IX. DISBURSEMENT OF GRANT FUNDS

A. Pre-Disbursement Requirements

1. The grant recipient is required to provide evidence that it has fidelity bond coverage for persons authorized to handle funds under the grant award in an amount sufficient to protect the interests of EDA and the RLF. Such insurance coverage must exist at all times during the life of the RLF.

2. The grant recipient is required to provide a certification by an independent accountant familiar with the grant recipient's accounting system that its accounting system is adequate to identify, safeguard, and account for all RLF funds, including RLF Income.

3. The grant recipient is required to certify that the standard RLF loan documents necessary for lending are in place and that these documents have been reviewed by legal counsel for adequacy and compliance with the terms and conditions of the grant. The standard loan documents must include at a minimum, the following: Loan Application, Loan Agreement, Promissory Note, Security Agreement(s), Deed of Trust or Mortgage, and Agreement of Prior Lien Holder.

B. Disbursement Procedures

The grant recipient is required to draw grant funds electronically by the Automated Clearing House Electronic Funds Transfer (ACH/EFT) system. A grant recipient may request disbursements only at the time and in the amount immediately needed to close a loan or disburse funds to a borrower. RLF grant funds are considered to be made available to grant recipients on a reimbursement basis (as an obligation is incurred by the grant recipient at the time of loan approval and loan announcement). Grant funds should be requested only for immediate use, i.e., when the intent is to disburse the funds within 14 days of receipt. If grant funds are requested and the loan disbursement is subsequently delayed, a grant recipient may hold the funds up to 30 days from the date of receipt, but should return the funds if disbursement of the grant funds is unlikely within the 30 day period. Returned funds will be normally available to the grant recipient for future drawdown. When returning prematurely drawn funds, checks should identify on their face the name of the grantor agency—"EDA" followed by the grant award number and the words "Premature Draw." The grant recipient may also indicate, if a cover letter is sent, that a credit in the amount of the check is to be made to the grant award number for future drawdown. Checks should be submitted to: Economic

Development Administration, P.O. Box 100202, Atlanta, Georgia 30384.

As stated above, the nonfederal matching share must be disbursed either proportionately with the EDA grant funds or at a faster rate. Interest earned on prematurely drawn grant funds must be returned to EDA at least quarterly for deposit in the U.S. Treasury. (Note: Grantees may deduct and retain a portion of such earned interest for administrative expenses up to the maximum amounts allowed under either 15 CFR Part 24 or OMB Circular A-110 or its implementing Department regulation, as applicable). Returned interest payments should indicate on the face of the check "EDA" followed by grant award number and the word "Interest". Checks for interest should be submitted to the same Atlanta, Georgia address as above.

To request a grant disbursement by the ACH/EFT method, a grant recipient must submit a completed Request For Advance or Reimbursement, Standard Form 270 to the EDA Regional Office using the attached Special Instructions (Exhibit B) which are specific to RLF grants. Grant recipients may generally expect to have funds available for subsequent disbursement from five to ten working days after the EDA Regional Office receives the SF 270.

C. Principal Repayments During Grant Disbursement Phase

Principal repayments from active RLF loans that are received by the grant recipient must be placed immediately in the loan fund to be available for relending only. As each new loan is made, the grant recipient may request a disbursement of grant funds only for the difference, if any, between the amount of funds available for relending (from repayments of loan principal and RLF Income) and the amount of the new loan, less an amount for local matching funds as may be required to be disbursed concurrent with the grant (refer to Section V.B. for matching fund requirements). However, RLF Income received during the current period (as defined in Section VII.C.2.) may be held for the duration of the period to cover eligible administrative expenses, and need not be disbursed in order to draw additional grant funds.

D. Loan Closing/Disbursement Schedule

RLF loan activity must be sufficient to draw down grant funds in accordance with the prescribed time schedule for loan closings and disbursements to eligible RLF borrowers. Unless otherwise stated in the grant agreement, the time schedule requires that the initial round of lending (i.e., the grant disbursement phase) be completed within three (3) years of the grant award with no less than 50 percent of the grant funds, and

of the nonfederal matching share, disbursed within eighteen months and 80 percent within two years.

Should the grant recipient substantially fail to meet any of the prescribed deadlines, additional grant funds will not be disbursed unless (1) funds are needed to close and disburse funds on loans approved prior to the deadline and will be disbursed within 45 days of the deadline, (2) funds are needed to meet continuing disbursement obligations on loans closed prior to the deadline, or (3) EDA has approved a time schedule extension.

(Note: An approved loan is defined as a loan that has been approved by the RLF loan board but has not been closed. A loan is closed when the loan agreement and note have been signed by the borrower. The full amount of a loan may be disbursed to the borrower at the time of loan closing, or may be disbursed in installments and under conditions specified in the loan agreement.)

E. Time Schedule Extensions

Grant recipients are responsible for contacting EDA as soon as conditions become known that may materially affect their ability to meet any of the required disbursement deadlines. Except under the conditions described, a grant recipient is required to submit a written request for continued use of grant funds beyond the missed deadline. Extension requests must provide good reason for the delay and demonstrate that (1) the delay was unforeseen or generally beyond the control of the Recipient, (2) the need for the RLF still exists, (3) the current or planned use, and anticipated benefits of the RLF remain consistent with the current adjustment strategy and RLF Plan, and (4) achievement of a new proposed time schedule is reasonably possible and why no further delays are foreseen. EDA is under no obligation to grant a time extension, and in the event an extension is denied, EDA will deobligate (terminate) all or part of the unused portion of grant.

By law, grant funds remain available to EDA for disbursement only until September 30 of the fifth year after the fiscal year of the grant award. No time extensions will be granted beyond that time and any undisbursed funds remaining will be deobligated.

X. CAPITAL UTILIZATION STANDARD

A. Definition

During the revolving phase, grant recipients are expected to manage their repayment and lending schedules to maximize the amount of capital loaned out or committed at all times. Under normal circumstances, at least 75 percent of an RLF's capital should be in use. [RLF Income earned during the current period (as defined in Section VII.C.2) is not included as RLF capital.] EDA may

recognize exceptions for RLFs whose Plan calls for making loans that are large relative to the size of the capital base. RLFs with capital bases in excess of \$4 million are expected to maintain a proportionately higher percentage of their funds loaned out. The percentage will be determined by EDA on a case-by-case basis.

When the percentage of capital loaned out falls below the applicable standard, the dollar amount of the funds equivalent to the difference between the actual percentage of capital loaned out and the standard is referred to as "excess funds."

B. Deviation

In the event that there are excess funds at the time a semiannual report is due, the grant recipient must submit an explanation of the situation with the report, and if there is a significant deviation from the standard, as determined by EDA, the grant recipient must describe the remedial action to be taken.

C. Sequestration of Excess Funds

At any time subsequent to a second consecutive report showing that the applicable standard has not been met, EDA may require the grant recipient to deposit excess funds in an interest bearing account; that portion of the interest earned on that account, attributable to the EDA grant, will be remitted to the U.S. Treasury. EDA approval will be required to withdraw sequestered funds.

D. Persistent Noncompliance

EDA will normally give the grant recipient a reasonable period of time to loan the excess funds and achieve the standard. However, when a grant recipient fails to achieve the applicable standard after a reasonable period of time, as determined by EDA, the grant will be subject to sanctions for suspension and/or termination as described in Section XII of this Manual.

XI. MONITORING

EDA monitors grant recipients for compliance with the Terms and Conditions of the grant, for performance against national norms and individual portfolio standards, and for the contribution of the RLF to the area's economic adjustment process. Monitoring and performance assessments are based on periodic reports submitted by the grant recipients, organizational and Federal audits, and site visits by EDA staff.

A. Reports

1. *Grant Status Reports:* Grant recipients are required to submit standard Federal grant status reports to EDA during the grant disbursement phase as specified in the Terms and Conditions of the grant agreement.

These include: (a) Standard Form 270, Request for Advance or Reimbursement, which is submitted each time a grantee needs to draw Federal funds (see Section IX.B. and Exhibit B); and (b) Standard Form 272, Federal Cash Transactions Report (Exhibit C), which is due within 15 days following the end of each calendar quarter and shows the status of grant funds. Failure to submit a Standard Form 272, when due, will prevent a grant recipient from obtaining funds until the form is submitted.

2. *Financial and Performance Reports:* All grant recipients are required to complete and submit Financial and Performance Reports (Exhibit D) semiannually unless otherwise notified by EDA.

a. *Initial Report:* For grants, other than recapitalizations, awarded between October 1, and March 31, the initial report due date is the following October 31. For grants awarded between April 1 and September 30, the initial report due date is the following April 30.

b. *Subsequent Reports:* After the initial report, the semiannual report is due on October 31, for the period of loan activity ending September 30, and April 30, for the period ending March 31.

Generally, RLF grant recipients will be required to submit reports to the EDA Regional Office every six months for a minimum of one year after disbursement of all grant funds, after which a grant recipient may be eligible for "graduation" to a shorter, annual reporting format (Exhibit E). Grant recipients must request this in writing. Recipients of recapitalization grants shall report on the full amount of their RLF funds in each subsequent semiannual or annual report submitted.

3. *Annual Reports:* For grant recipients graduated to an annual reporting schedule, the report covers the twelve month period ending September 30, and is due October 31. The annual reporting requirement continues through the life of an RLF unless EDA determines that more frequent or detailed reports are needed for closer monitoring of grant violations or other problems. Note that the annual report requires documentation of capital utilization at semiannual intervals pursuant to the requirements of Section X.

4. *Special Reports:* Special reports to enable EDA monitoring of compliance issues arising from audits, site visits, or other reviews may be requested from the grant recipient in writing on a case by case basis.

First time grant recipients may be required to submit periodic reports on their progress in initiating RLF activity, prior to the due date of the first semiannual report.

B. Audits

Grant recipients are subject to the following audit requirements for the duration of the RLF.

1. In accordance with the terms and conditions of the grant award, the grant recipient shall arrange for a Single Audit as referenced in the RLF Audit Guidelines and OMB Circular A-133. Such audits should be conducted by an independent auditor who meets the general standards specified in generally accepted government auditing standards. With the exception of newly awarded grants and limited circumstances described in the RLF Audit Guidelines, the majority of RLF grant recipients will require an annual audit.

Pursuant to the Single Audit Act Amendments of 1996 (P.L. 104-156), and OMB Circular A-133, as codified in DOC Regulations found at 15 CFR Part 29, audits are required of all State, local government and non-profit corporation RLF grant recipients that expended total Federal awards of at least \$300,000 in a given fiscal year. For all RLF grants, the calculation of RLF expenditures will include the beginning balance of all outstanding loans plus the current year's loan and loan-related expenditures. The cost principles to be followed are contained in OMB Circulars A-21, A-87 or A-122, as applicable.

Audit requirements for RLF's are summarized in the EDA RLF Audit Guidelines which should be made available to the auditor prior to the audit engagement. Failure to comply with these requirements could result in an unacceptable audit.

2. The U.S. Department of Commerce Office of Inspector General (OIG) may audit, inspect, or investigate an RLF grant at any time.

C. Site Visits

EDA will periodically schedule site visits to review the grant recipient's operating procedures, monitor progress and evaluate the effectiveness of the RLF in supporting the area's economic adjustment process and strategic objectives.

XII. NONCOMPLIANCE WITH THE GRANT TERMS

A. Suspension

EDA may suspend RLF lending activity when EDA determines that a grant recipient has failed to comply with the grant terms. Before suspending a grant, EDA may give the grant recipient a reasonable period of time in which to take the necessary corrective action to comply with the grant terms. However, should it appear that the grant recipient had not taken or will not take the necessary action, and/or that continued operation of the RLF would place the assets at risk, EDA may suspend the grant immediately. Upon suspension, the grant recipient will be prohibited from any new lending activity, although normal loan servicing and collection efforts will continue. In addition, the grant recipient may be subject to restrictions on the use of RLF Income and specific

actions to protect the RLF assets may be required.

In the event that the compliance problems are not resolved during the suspension period, EDA will attempt to resolve the issues through means including working with the Recipient to identify a successor to assume responsibility for administering the RLF in accordance with the terms of the original grant agreement. If issues cannot be resolved, EDA will initiate proceedings to terminate the grant for cause.

B. Termination for Cause

EDA may terminate an RLF grant for cause with or without prior suspension of lending activity.

C. Partial Termination

When EDA determines, after a reasonable period of time, that a grant recipient is unable or unwilling to use the full amount of the grant funds or of the RLF capital and RLF Income thereby generated, EDA may partially terminate the grant if EDA determines that the remaining capital is sufficient to support continuation of an effective RLF operation.

When a grant recipient fails to complete the initial round of lending in the time schedule provided in the grant agreement, the unused grant funds may be deobligated and the grant award amended to reflect the reduced grant amount. The nonfederal matching share will be expected to remain in the RLF unless otherwise specified in the grant agreement or agreed to in writing by EDA.

Grant recipients in the revolving phase who persistently fail to make maximum use of the available RLF capital, as defined by the applicable capital utilization standard in Section X, will be required to return excess funds, in an amount determined by EDA, to the U.S. Treasury. This amount will not be greater than EDA's proportionate share of the excess funds sequestered at the time. The grant award will be amended to reflect the reduced amount of EDA's participation.

XIII. TERMINATION FOR CONVENIENCE

A grant recipient has the right to request termination for convenience of the grant, in whole, or in part, at any time. Termination is undertaken without prejudice to the grant recipient upon agreement of both parties that the purpose of the grant would not be served by further expenditure of funds, and in the case of a partial termination, EDA determines that sufficient funds remain to permit an effective RLF operation. The Federal share of the funds must be returned to the U.S. Treasury as described below in Section XIV.

XIV. RECOVERY OF EDA INTEREST IN THE RLF ASSETS

In case of termination, for cause or convenience, EDA has the responsibility, on behalf of the Federal Government, to recover its fair share of the value of the RLF assets consisting of cash, receivables, personal and real property, and notes or other financial instruments developed through use of the funds. EDA's fair share is the amount computed by applying the percentage of EDA participation in the total capitalization of the RLF to the current fair market value of the assets thereof; provided that with EDA's approval the Recipient may use for other economic development purposes that portion of such RLF property which EDA determines is attributable to the payment of interest on RLF loans and not used by the Recipient for administrative or other allowable expenses. In addition, EDA has the right to compensation, over and above its share of the current fair market value of the assets, when it is determined that the value of such assets has been reduced by the improper/illegal use of grant funds.

XV. SALE OR SECURITIZATION OF LOANS

Grant recipients may, with EDA's prior written consent, further the objectives of the RLF through the sale of loans or securitization of the loan portfolio to generate money to be used for additional loans as part of the RLF. A grant recipient contemplating such an action is advised to consult with EDA prior to development of a formal proposal.

In the event of the sale, collection, or liquidation of loans, any proceeds, net of repaid principal and reasonable administrative costs incurred, up to the amount of the outstanding loan principal, must be returned to the RLF for relending. Any net proceeds from loan sales above the outstanding loan principal is considered RLF Income and must either be added to the RLF capital base for lending or used to cover eligible costs for administering the RLF in accordance with the rules for use of RLF Income.

XVI. APPENDIX

The following reference materials and required or sample reporting formats are available from EDA:

OMB Circulars and CFR'S (List of Reprints)

- 15 CFR Part 24, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
- OMB Circular A-87, Cost Principles for State and Local Governments
- 15 CFR Part 29a, Audit Requirements for State and Local Governments

Economic Development Administration, Commerce

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15 CFR Part 29b, Audit Requirements for Institutions of Higher Education and Other Nonprofit Organizations

OMB Circular A-133, Audits of States, Local Governments and Nonprofit Organizations

OMB Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations Uniform Administrative Requirements

OMB Circular A-122, Cost Principles for Nonprofit Organizations

OMB Circular A-21, Cost Principles for Educational Institutions

48 CFR Part 31, Contract Cost Principles and Procedures

15 CFR Part 26, Governmentwide Debarment and Suspension and Governmentwide Requirements for Drug Free Workplace

EDA Reference Materials and Reporting Formats

EXHIBIT A: RLF Income and Expense Statement with Instructions

EXHIBIT B: Request for Advance or Reimbursement (SF-270) with EDA Special Instructions

EXHIBIT C: Federal Cash Transaction Report (SF-272)

EXHIBIT D: Semiannual Report for RLF Grants with Instructions

EXHIBIT E: Annual Report for RLF Grants with Instructions

EXHIBIT A

RLF INCOME AND EXPENSE STATEMENT

For The (Most Recent) 12 Month
Period Ended: _____

	Most Recent Period	Prior Period
1. RLF INCOME	\$	\$
2. EXPENSES CHARGED TO RLF INCOME		
a. Employee Salaries	\$	\$
b. Employee Fringe Benefits	\$	\$
c. RLF-related Travel	\$	\$
d. Loan Processing/Closing Costs	\$	\$
e. Professional Services	\$	\$
f. Marketing	\$	\$
g. RLF Staff Training	\$	\$
h. Equipment - Rental	\$	\$
- Acquisition	\$	\$
i. Space (rent)	\$	\$
j. Audit	\$	\$
k. Indirect Costs	\$	\$
l. Other (Specify)	\$	\$
3. TOTAL EXPENSES (sum 2.a thru 2.l)	\$	\$
4. NET RLF INCOME (1 minus 3)	\$	\$
5. Cumulative NET RLF INCOME	\$	\$
6. EXPENSES as % of RLF INCOME (3/1)	%	%
7. For the current 12 month period, provide an estimate of projected RLF Income and the percentage expected to be used for RLF administrative expenses. Projected RLF Income: \$ _____ % for Administration: _____ %		
8. On a separate page, list all personnel positions which were funded partially or in full with RLF Income for the most recent period only; list the aggregate dollar amount for salaries and fringe benefits for each listed position, and the amount and percent which were funded by RLF Income.		

CERTIFICATION OF AUTHORIZED REPRESENTATIVE (designated RLF Administrator or Chief Financial Officer): I certify that the above information and any attachments thereto are complete and accurate to the best of my knowledge.

By: _____ Date: _____

Name and Position: _____

EXHIBIT A (BACK)—INSTRUCTIONS FOR RLF
INCOME AND EXPENSE STATEMENT
The RLF INCOME AND EXPENSE STATE-
MENT is to be used by recipients of revolv-

ing loan fund (RLF) grants provided by the
Economic Development Administration
(EDA), U.S. Department of Commerce. The
Statement is to be completed for each year

in which a grantee uses income generated from RLF activities to pay for RLF administrative expenses. It should be completed within 90 days of a grant recipient's fiscal year end or September 30. The period will be selected by the grant recipient; once selected, it may not be changed without the prior approval of EDA. Instructions for submitting the Statement are included in the EDA Administrative Manual, Section VII. Expenses charged to RLF income sources must be eligible under the terms of the grant and must comply with applicable OMB cost principles and the EDA RLF Audit Guide. For grantees completing the Statement for the first time, or which did not charge any expenses against RLF income sources in a prior period, complete only the second column marked "Most Recent Period" and answer questions 7. And 8.

Except for the items explained below, all items on the Statement are self-explanatory or are adequately addressed in the RLF Audit Guide and applicable OMB Cost Principles.

Item and Entry

- 1 "RLF INCOME" includes all interest earned on outstanding loan principal, interest earned on accounts holding idle RLF funds, and loan fees and other loan-related earnings.

2d Enter the amount of grantee out-of-pocket costs which were necessary to process and close RLF loans. These costs may include such costs for credit reports, title insurance, Uniform Commercial Code searches, filing fees, appraisals, etc., which are recorded in the grantee's accounting records. Any costs not recorded in the grantee's accounting records, e.g., those paid directly by a borrower to a third party, or those that were netted against loan fees (thereby reducing reported income), need not be reported here.

2g Enter the costs charged to RLF Income for RLF-related training for employees involved in RLF operations. These costs may include training materials, textbooks, tuition and registration fees. Any training-related travel costs should be reported in Item 2c.

5 "Cumulative NET RLF INCOME" includes all RLF Income earned during the life of the RLF that was not used for RLF administrative expenses. The amount reported should be inclusive of the NET RLF INCOME reported in Item 4. (The Cumulative NET RLF INCOME for the most recent period should equal the sum of the amounts in Item 5 for the prior period and in Item 4 for the most recent period.

EXHIBIT B

REQUEST FOR ADVANCE OR REIMBURSEMENT (See Instructions on back)		OMB Approval NO. 0348-0004		Page	of Pages
		1. TYPE OF PAYMENT REQUESTED	A. "X" ONE OR BOTH BOXES <input type="checkbox"/> Advance <input type="checkbox"/> Reimbursement b. "X" the applicable box <input type="checkbox"/> Final <input type="checkbox"/> Partial	2. BASIS OF REQUEST <input type="checkbox"/> CASH. <input type="checkbox"/> ACCRUAL	
3. FEDERAL SPONSORING AGENCY AND ORGANIZATION ELEMENT TO WHICH THIS REPORT IS SUBMITTED		4. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY		5. PARTIAL PAYMENT REQUEST NUMBER FOR THIS REQUEST	
6. EMPLOYER IDENTIFICATION NUMBER	7. RECIPIENT'S ACCOUNT NUMBER OR IDENTIFYING NUMBER	8. PERIOD COVERED BY THIS REQUEST			
		FROM (month, day, year)		TO (month, day, year)	
9. RECIPIENT ORGANIZATION NAME NUMBER AND STREET CITY, STATE and ZIP CODE		10. PAYEE (where check is sent is different than item 9) NAME NUMBER AND STREET CITY, STATE and ZIP CODE			
11. COMPUTATION OF AMOUNT OF REIMBURSEMENTS/ADVANCES REQUESTED					
PROGRAMS/FUNCTIONS/ACTIVITIES	(a)	(b)	(c)	TOTAL	
a. Total Program - Outlays to Date (as of date)	\$	\$	\$	\$	
b. Less: Cumulative program income					
c. Net program outlays (Line a minus line b)					
d. Estimated net cash outlays for advance period					
e. Total (Sums of lines c & d)					
f. Non-Federal share of amount on line e.					
g. Federal share of amount on line e.					
h. Federal payments previously requested					
i. Federal share now requested (Line g minus line h)					
j. Advances required by month, when requested by Federal grantor Agency for use in Making prescheduled advances	1st month 2nd month 3rd month				
12. ALTERNATE COMPUTATION FOR ADVANCES ONLY					
a. Estimated Federal cash outlays that will be made during period covered by the advance				\$	
b. Less: Estimated balance of Federal cash on hand as of beginning of advance period					
c. Amount requested (Line a minus line b)				\$	

AUTHORIZED FOR LOCAL REPRODUCTION

(Continued on Reverse)

 STANDARD FORM 270 (REV. 2-62)
 PRESCRIBED BY OFFICE OF MANAGEMENT AND BUDGET
 C/F NO. A-102 AND B-110

EXHIBIT B

CERTIFICATION

I certify that to the best of my knowledge and belief the data on the reverse are correct and that all outlays were made in accordance with the grant conditions or other agreement and that payment is due and has not been previously requested.

Signature of Authorized Certifying Official

Date Request Submitted

Typed or Printed Name and Title

Telephone (Area Code, Number, Extension)

This Space for Agency Use

Public reporting burden for this collection of information is estimated to average 60 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the OFFICE of Management and Budget, Paperwork Reduction Project (0348-0004), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

INSTRUCTIONS

Please type or print legibly. Items 1, 3, 5, 9, 10, 11c, 11e, 11f, 11g, 11i, 12 and 13 are self explanatory; specific instructions for other items are as follows:

- | Item | Entry | | |
|-------|--|-----|---|
| 2. | Indicate whether request is prepared on cash or accrued expenditure basis. All requests for advances shall be prepared on a cash basis. | 11a | Enter in "as of date", the month, day, and year of the ending of the accounting period to which this amount applies. Enter program outlays to date (net of refunds, rebates, and discounts), in the appropriate columns. For requests prepared on a cash basis, outlays are the sum of actual cash disbursements for goods and services, the amount of indirect expenses charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to subcontractors and subrecipients. For requests prepared on an accrued expenditure basis, outlays are the sum of the actual cash disbursements, the amount of indirect expenses incurred, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received and for services performed by employees, contracts, subgrantees and other payees. |
| 4 | Enter the Federal grant number, or other identifying number assigned by the Federal sponsoring agency. If the advance or reimbursement is for more than one grant or other agreement, insert N A; then, show the aggregate amounts. On a separate sheet, list each grant or agreement number and the Federal share of outlays made against the grant or agreement. | 11b | Enter the cumulative cash income received to date, if requests are prepared on a cash basis. For requests prepared on an accrued expenditure basis, enter the cumulative income earned to date. Under either basis, enter only the amount applicable to program income that was required to be used for the project or program by the terms of the grant or other agreement. |
| 6 | Enter the employer identification number assigned by the U.S. Internal Revenue Service, or the FICE (institution) code if requested by the Federal agency. | 11d | Only when making requests for advance payments, enter the total estimated amount of cash outlays that will be made during the period covered by the advance. |
| 7 | This space is reserved for an account number or other identifying number that may be assigned by the recipient. | 13 | Complete the certification before submitting this request. |
| 8 | Enter the month, day and year for the beginning and ending of the period covered in this request. If the request is for an advance or for both an advance and reimbursement, show the period that the advance will cover. If the request is for reimbursement, show the period for which the reimbursement is requested. | | |
| Note: | The Federal sponsoring agencies have the option of requiring recipients to complete items 11 or 12, but not both. Item 12 should be used when only a minimum amount of information is needed to make an advance and outlay information contained in item 11 can be obtained in a timely manner from other reports. | | STANDARD FORM 270 BACK (Rev. 2-92) |
| 11 | The purpose of the vertical columns (a), (b), and (c), is to provide space for separate cost breakdowns when a project has been planned and budgeted by program, function or activity. If | | |

Item Entry
additional columns are needed, use as many additional forms as needed and indicate page number in space provided in upper right; however, the summary totals of all programs, functions, or activities should be shown in the "total" column on the first page.

EXHIBIT B (REVISED 12/98)—SPECIAL INSTRUCTIONS FOR COMPLETION OF STANDARD FORM 270 FOR EDA REVOLVING LOAN FUND GRANTS

These instructions apply to revolving loan fund (RLF) grants funded by the Economic Development Administration (EDA), U.S. Department of Commerce, under Section 209 of the Public Works and Economic Development Act of 1965, as amended. RLF grant recipients are required to use Standard Form 270 to draw grant funds when needed to disburse to RLF borrowers. Funds may be drawn only for immediate use (i.e., when the intent is to disburse the funds within 14 days of receipt), and only to the extent that the recipient does not have funds on hand from loan repayments and certain RLF income sources to cover the proposed disbursement request. (See below and EDA's RLF Administrative Manual, Section IX, for further details.) Grant funds not disbursed within 30 days of receipt must be returned to EDA. Items 1b, 3, 9, 11c, 11e, and 11i are self-explanatory; specific instructions for other items follow:

Item and Entry

- 1a Indicate whether the request is for a reimbursement or an advance. (Note the RLF disbursements are normally considered reimbursement as a reimbursable obligation is created at the time of loan approval. A request for an advance may be requested under special circumstances.
- 2 Disregard.
- 4 Enter the Federal grant number or other identifying number assigned by EDA. If the reimbursement or advance is for more than one grant or other agreement, insert N/A; then show the aggregate amounts. On a separate sheet, list each grant or agreement number and the Federal share of outlays made against the grant or agreement.
- 5 Enter in numerical order the number of this disbursement request. Begin with the number "1" for each new grant.
- 6 Enter the employer identification number assigned by the US Internal Revenue Service, or the FICE (institution) code if requested by EDA.
- 7 This space is reserved for an account number or other identifying number that may be assigned by the grant recipient.
- 8 Disregard.
- 10 Enter "ACH/EFT" for funds disbursement by the Automated Clearing House Electronic Funds Transfer System. For further details, refer to Section E.02 of the RLF Standard Terms and Conditions.
- 11 The purpose of the vertical columns (a), (b), and (c) is to provide space for separate cost breakdowns when a project has been planned and budgeted by program, function, or activity. If additional col-

umns are needed, use as many additional forms as needed and indicate the page number in the space provided in upper right; if more than one column is used, the summary totals of all programs, functions, or activities should be shown in the "total" column on the first page.

- 11a Enter in "as of date", the month, day and year of the ending of the accounting period to which this amount applies. Enter the amount of cumulative outlays for RLF loans from the following sources: EDA RLF grant funds, matching funds, and program income (defined in Section VII.A of the RLF Administrative Manual).

Include actual, pending (previous outlays requests that have not yet been disbursed) and proposed (those proposed under this request) outlays. For recapitalized RLF's—those where a subsequent EDA RLF grant was made to the same recipient—treat cumulative outlays as beginning with the inception of the RLF.

- 11b Cumulative Program Income, as defined below, must be used before or concurrent with the disbursement of new grant funds (pursuant to Section IX of the RLF Administrative Manual). Cumulative Program Income is a net figure computed, as follows:

+Cumulative Principal Repaid*
 +Cumulative RLF Income Received**
 – Cumulative Administrative Cost Expensed to RLF Income***

Footnotes:

*This is the cumulative RLF loan principal that has been repaid from inception of the RLF.

**This includes all RLF Income earned and received from inception of the RLF. Current period RLF Income on hand may be excluded from this amount if any portion of it is anticipated to be used during the remainder of the current period. Note that failure to exclude these funds here will increase Cumulative Program Income (line 11b) which will lower the amount of grant funds to be requested for disbursement (line 11i). Any RLF Income available at the end of a period is required to be added to the RLF capital base for lending.

***Enter all administrative costs Expensed to RLF Income from Inception of the RLF.

Definitions

Program Income—is the sum of all RLF principal repayments plus RLF Income (defined below).

RLF Income—includes all RLF-generated income from loan fees, interest earned on loans and on accounts holding idle RLF funds, and other loan-related earnings.

Period—refers to the 12-month reporting period by each grant recipient; it may end on

either September 30 or the grantee's fiscal year-end date. (Refer to Section VII.C.2. of RLF Administrative Manual.

11d Enter "0" unless an advance of grant funds is being requested—see Item 1a above.

11f Enter the total amount of the matching funds previously expended plus matching funds to be disbursed as part of this request (and any previous pending request, if applicable). When calculating this amount, note that the matching funds amount in 11f as a percent of the amount on line 11c may not be less than the percentage relationship between the aggregate of matching funds and of total project costs indicated in the grant award(s). Matching funds must be expended either before or at least proportionately with EDA grant funds.

11g Enter the EDA share of the amount on line 11e. This should be the difference between the amounts on lines 11e and 11f.

11h Enter the amount of EDA funds previously requested. This should be equal to the amount reported in Item 11g of the previous SF 270 submitted by the recipient.

12 Disregard.


13 In the space indicated for "agency use" or on a separate page, provide the following disbursement information:

a. Indicate whether the RLF identified in Section 4 is an "initial" or "recapitalization" RLF grant. If an initial grant, show the EDA grant funds expended as a percent of total expenditures by dividing the amount reported in Item 11g by the amount reported in Item 11e. If a recapitalization grant, show both the EDA and the matching fund dollar outlays (including actual and proposed outlays) for the grant disbursement; also show the percentage of EDA dollar outlays to total dollar outlays for the grant under disbursement.

b. If any previously requested grant funds have been received but not disbursed, list the date of receipt and the amount remaining to be disbursed. If not applicable, type "NA".

c. List the RLF borrowers and the respective RLF dollar amounts anticipated to be disbursed under this request.

EXHIBIT C

FEDERAL CASH TRANSACTIONS REPORT		OMB APPROVAL NO. 0348-0003	
(See instructions on the back. If report is for more than one grant or assistance agreement, attach completed Standard Form 272-A.)		1. Federal sponsoring agency and organizational element to which this report is submitted.	
2. RECIPIENT ORGANIZATION Name: Number and Street: City, State and Zip Code:		4. Federal grant or other identification number.	5. Recipient's account number or identifying number.
		6. Letter of credit number.	7. Last payment voucher number.
		Give total number for this period.	
		8. Payment Vouchers credited to your account.	9. Treasury checks received (whether or not deposited).
		10. PERIOD COVERED BY THIS REPORT	
3. FEDERAL EMPLOYER IDENTIFICATION NO. 		From (month, day, year)	TO (month, day, year)
11. STATUS OF FEDERAL CASH (See Specific Instructions On Back)	a. Cash on hand beginning of reporting period		\$
	b. Letter of credit withdrawals		
	c. Treasury check payments		
	d. Total receipts (Sum of lines b and c)		
	e. Total cash available (Sum of lines a and d)		
	f. Gross disbursements		
	g. Federal share of program income		
	h. Net disbursements (Line f minus line g)		
	i. Adjustments of prior periods		
	j. Cash on hand end of period		\$
	12. The AMOUNT SHOWN ON LINE 11j, ABOVE, REPRESENTS CASH REQUIREMENTS FOR THE ENSUING DAYS		13. OTHER INFORMATION a. Interest income \$ b. Advances to subgrantees or subcontractors \$
14. REMARKS (Attach additional sheets of plain paper, if more space is required.)			
15. CERTIFICATION			
I certify to the best of my knowledge and belief that this report is true in all aspects and that all disbursements have been made for the purpose and conditions of the grant or agreement.	AUTHORIZED CERTIFYING OFFICIAL	SIGNATURE	DATE REPORT SUBMITTED
		TYPED OR PRINTED NAME AND TITLE	TELEPHONE ((Area Code, Number, Extension))
THIS SPACE FOR AGENCY USE			

NSN 7540-01-016-5435

STANDARD FORM 272 (REV. 3-92)
PRESCRIBED BY OFFICE OF MANAGEMENT AND BUDGET

INSTRUCTIONS

Public reporting burden for this collection of information is estimated to average 120 minutes per response, including timer for reviewing instructions, searching existing data sources, gathering and maintaining the data

needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden,

to the Office of Management and Budget, Paperwork Reduction Project (0348-0003), Washington, DC 20503.

Please *do not* return your completed form to the Office of Management and Budget, send it to the address provided by the sponsoring agency.

Please type of print legibly, Items 1, 2, 8, 9, 10, 11d, 11e, 11h, and 15 are self explanatory, specific instructions for other items are as follows:

Item and Entry

3 Enter employer identification number assigned by the U.S. Internal Revenue Service or the FIC (institution) code.

If this report covers more than one grant or other agreement, leave items 4 and 5 blank and provide the information on Standard Form 272-A, Report of federal Cash Transactions—Continued; otherwise;

4 Enter Federal grant number, agreement number, or other identifying numbers if requested by sponsoring agency.

5 This space reserved for an account number or other identifying number that may be assigned by the recipient.

6 Enter the letter of credit number that applies to this report. If all advances were made by Treasury check, enter "NA" for not applicable and leave items 7 and 8 blank.

7 Enter the voucher number of the last letter-of-credit payment voucher (Form TUS 5401) that was credited to your account.

11a Enter the total amount of Federal cash on hand at the beginning of the reporting period including all of the Federal funds on deposit, imprest funds, and undeposited Treasury checks.

11b Enter total amount of Federal funds received through payment vouchers (Form TUS 5401) that were credited to your account during the reporting period.

11c Enter the total amount of all Federal funds received during the reporting period through Treasury checks, whether or not deposited.

11f Enter the total Federal cash disbursements, made during the reporting period, including cash received as program income. Disbursements as used here also in-

clude the amount of advances and payments less refunds to subgrantees or contractors, the gross amount of direct salaries and wages, including the employee's Share of benefits if treated as a direct cost, interdepartmental charges for supplies and services, and the amount to which the recipient is entitled for indirect costs.

11g Enter the Federal share of program income that was required to be used on the project or program by the terms of the grant or agreement.

11i Enter the amount of all adjustments pertaining to prior periods affecting the ending balance that have not been included in any lines above. Identify each grant or agreement for which adjustment was made, and enter an explanation for each adjustment under "Remarks". Use plain sheets of paper if additional space is required.

11j Enter the total amount of Federal cash on hand at the end of the reporting period. This amount should include all funds on deposit, imprest funds, and undeposited funds (line 3, less line h, plus or minus line i).

12 Enter the estimated number of days until the cash on hand, shown on line 11j, will be expended. If more than three days cash requirements are on hand, provide an explanation under "Remarks" as to why the drawdown was made prematurely, or other reasons for the excess cash. The requirement for the explanation does not apply to prescheduled or automatic advances.

13a Enter the amount of interest earned on advances of Federal funds but not remitted to the Federal agency. If this includes any amount earned and not remitted to the Federal sponsoring agency for over 60 days, explain under "Remarks". Do not report interest earned on advances to States.

13b Enter amount of advance to secondary recipients included in item 11h.

14 In addition to providing explanations as required above, give additional explanation deemed necessary by the recipient and for information required by the Federal sponsoring agency in compliance with governing legislation. Use plain sheets of paper if additional space is required.

SEMIANNUAL REPORT FOR EDA-FUNDED RLF GRANTS

Grantee Name:		Period Ending:		
Project No.:		Contact Person:		
		Phone:		
PART I: PORTFOLIO STATUS (000'S)				
A. Status of Direct Loans				
	(1) #	(2) RLF \$ Loaned	(3) RLF Principal Outstanding	
1. Total Loans Made		\$	\$	
2. Fully Repaid		\$	\$	
3. Current		\$	\$	
4. Delinquent (<60 Days)		\$	\$	
5. In Default (>60 Days)		\$	\$	
6. Total Active Loans (Add lines 3, 4 & 5)		\$	\$	
7. Total Written Off		\$	\$	
			(Amount Lost)	
B. Status of Loan Guarantees:				
	#	RLF\$ Reserved	Total Amount Guaranteed	Current Exposure
1. Total Loans Guaranteed		\$	\$	
2. Fully Repaid		\$	\$	
3. Current		\$	\$	\$
4. Delinquent (<60 Days)		\$	\$	\$
5. In Default (>60 Days)		\$	\$	\$
6. Total Active Guarantees (Add lines 3, 4 & 5)		\$	\$	\$
7. Total Written Off			\$	\$
				(Amount Lost)

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PART II: PORTFOLIO SUMMARY

A. Summary of Loan Activities: Provide information below on **Total Loans** and **Active Loans** closed to date. This section provides an overview of the RLF's Progress in Meeting program and grant objectives as well as identifying results of **Core Performance Measures** outlined in Section F.01. of the RLF Standard Terms and Conditions. It also shows trends by comparing the total and active loan portfolios.

	Total Loans	Active Loans
1. # RLF Loans:		
2. RLF \$\$ Loaned:	\$	\$
3. Non-RLF \$\$ Leveraged by RLF:		
a. Private	\$	\$
b. Other	\$	\$
c. Total Leveraged \$\$ (a + b)	\$	\$
4. Total Project Financing (2 + 3c)	\$	\$
5. Private Sector Jobs:		
a. Created (Actual)		
b. Saved		
c. Actual + Saved (a + b)		
6. RLF \$\$ Loaned for Fixed Assets:	\$	\$
7. RLF \$\$ Loaned for Working Capital:	\$	\$
8. RLF \$\$ Loaned for:		
a. Start-up	\$	\$
b. Expansion	\$	\$
c. Retention	\$	\$
9. RLF \$\$ Loaned for:		
a. Industrial	\$	\$
b. Commercial	\$	\$
c. Service	\$	\$
10. RLF \$\$ Loaned to Minority Businesses:	\$	\$
11. RLF \$\$ Loaned to Women-Owned Businesses:	\$	\$
12. Other Targets (Specify):	\$	\$

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B. Comparison of RLF Portfolio to RLF Plan: In column one below, fill in the spaces by providing information from the "Targeting", "Standards" and "Financing" sections of the RLF Plan. If an item is not included in the RLF Plan, and therefore not applicable, indicate this by placing N/A in column one. In columns two and three, use the figures obtained in Part II. A. above to compute the ratios and percentages for Total and Active Loans, respectively. Formulas for the computations are indicated in the brackets next to each item. Discuss any significant deviations between columns one and two.

	RLF Plan		Total Loans		Active Loans	
1. Cost per Job (A2/A5c)	\$		\$		\$	
2. Non-RLF Leverage Ratios:						
a. Private (A3a/A2)	:		:		:	
b. Private & Other (A3c/A2)	:		:		:	
3. % Working Capital Loans (A7/A2)		%		%		%
4. % Loans in Eligible Target Area	100	%		%		%
5. RLF Portfolio Targeting						
a. % Start-ups (A8a/A2)		%		%		%
b. % Industrial (A9a/A2)		%		%		%
c. % Minority Owned (A10/A2)		%		%		%
d. % Women-Owned (A11/A2)		%		%		%
e. % Other (A12/A2)		%		%		%

PART III: PORTFOLIO FINANCIAL STATUS**A. RLF Funding Sources**

1. EDA	\$	
2. Grantee	\$	
3. Other - Specify:	\$	
4. Total RLF Funding (sum of 1-3)	\$	

B. Program Income Earned to Date:

5. Interest Earned on Loans:	\$	
6. Earnings from Accounts:	\$	
7. Fees Charged:	\$	
8. Total Program Income (sum of 5-7)	\$	
9. How much of Total Program Income (line 8) has been used to cover administration costs to date?	\$	
10. How much of Total Program Income has been added to the RLF for lending (line 8 minus line 9)?	\$	

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C. Status of RLF Capital:		
11. Total RLF Funding (line 4):	\$	
12. Program Income Added to RLF for lending (line 10):	\$	
13. Losses on Loans & Guarantees (amount lost from Part I.A.7 & b.7):	\$	
14. Current level of RLF Base Capital (sum of lines 11 & 12, less line 13):	\$	
D. Current Balance Available for New Loans:		
15. RLF Principal Outstanding on Loans (from Part I.A.6):	\$	
16. RLF \$\$ Reserved for Loan Guarantees (from Part I.B.6):	\$	
17. Current Balance Available (deduct amounts shown on lines 15 & 16 from Current level of Base Capital (line 14):	\$	
18. RLF \$\$ committed but not disbursed:	\$	
19. Current Balance Available (deduct amount on line 18 from line 17):	\$	
20. Current Balance Available (line 19) as a Percent of RLF Base Capital (line 14) - applies only to fully disbursed RLFs, otherwise enter N/A:		%
21. Same calculation as in line 20 above, but for preceding six month period (see prior Semiannual Report):		%
<i>Note: If lines 20 and 21 both exceed 25%, see instructions.</i>		

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PART IV: PORTFOLIO LOAN LIST		
Provide the following information for each RLF loan closed:		
Loan Recipient	Loan Type & Description	Financing By Source (Specify)
1. Borrower Name 2. Location (include city, county & state) 3. SIC Code - 4 Digit 4. Minority Owned 5. Woman Owned	1. Direct/Guaranty 2. Fixed Asset/Working Capital 3. Start-up, Expansion or Retention	1. RLF \$ 2. Other Public \$ 3. Private \$ 4. New Equity \$ 5. Total \$ 6. Amount Guaranteed \$
Closing Date & Loan Terms	Loan Status	Repayment Status
1. Date Close 2. Term: Years 3. Interest Rate 4. Total Fees	1. Fully Repaid: Date 2. Current as of: Date 3. Delinquent: Days 4. Default: Days 5. Write-Off: Date	1. Principal Repaid 2. Interest Paid 3. Amount Delinquent 4. Amount Default 5. Amount Written-Off
Job Impact		
1. Pre-Loan jobs 2. Jobs Created 3. Jobs Saved 4. Minority jobs (Created/saved) 5. Women jobs (Created/Saved)		
PART V: MISCELLANEOUS INFORMATION & CERTIFICATION		
A. Recent Loan Activity (Last 12 Months Only)		
1. # Applications Received:		
2. # Applications Received from minority-owned firms:		
and Women-owned firms:		
3. # Loans closed:		
4. # Loans closed from Minority-owned firms:		
and Women-owned firms:		

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B. Capital Utilization (Section X. of RLF Administrative Manual)			
		Complete as appropriate	
5. On page 4 of this Semiannual Report, if the percentages calculated in both D.20 and D.21 are greater than 25%, is an explanation attached discussing proposed actions (including target dates and goals) to reduce the amount of excess funds on hand? <i>(Check one)</i>		YES	NO
6. If both D.20 and D.21 on page 4 of this Semiannual Report are greater than 25%, list the amount of excess funds subject to sequestration.	\$		
7. List any amount in #6 that has been sequestered in a separate account.	\$		
C. RLF Income and Expenses (Section VII of RLF Administrative Plan)			
		Complete as appropriate	
8. Enter the month and day of the accounting period which has been selected for reporting of RLF Income and Expenses in accordance with Section VII.C. of the RLF Administrative Manual.			
9. Enter the amount of RLF Income earned during the most recent 12 month period, which was designated in #8.	\$		
10. Enter the amount of RLF Income that was used for administrative costs during the most recent 12-month period, which was designated in #8.	\$		
11. Divide the administrative costs reported in #10 by the RLF Income reported in #9 and enter the percentage figure.	%		
12. If the percentage in #11 is larger than 50%, or the amount in #10 is greater than \$100,000, was an Income and Expense Statement submitted to EDA as required in Section VII.C.2. of the RLF Administrative Manual. <i>(Check One)</i> (If applicable and not sent, submit an Income and Expense Statement with this report.)	YES	NO	N/A
D. Administration			
		Complete as appropriate	
13. Any key Staff Turnover in the last 12 months? <i>(Check One)</i> List position(s):		YES	NO
14. Attach a list of the current RLF Loan Board membership by name, occupation, race and gender.			
15. Enter the ending date of the most recent independent Audit covering the recipient and indicate type of Audit, i.e., "Single" or "Program Specific".			

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16. Attach the Audit referenced in #15 if it was not previously submitted to EDA.		
17. If the Audit referenced in #15 did not cover either the most recent or prior fiscal year end period, is an explanation attached? <i>(Check One)</i>	YES	NO
E. ANNUAL RLF PLAN CERTIFICATION (Section VIII of the RLF Administrative Manual and Section D.03 of the Standard Terms and Conditions)		
18. Is the required ANNUAL RLF Plan Certification attached? <i>(Check One)</i> If "no," indicate the date it will be submitted:	YES	NO
F. COMPLIANCE WITH IMPLEMENTATION SCHEDULE (To be completed only if grant is not fully disbursed)		
19. Is the actual grant implementation/disbursement progress in accordance with the schedule set forth by the Implementation Special Condition (or an EDA approved amendment thereto) required as a part of this grant award? <i>(Check One)</i> if "no," attach explanation.	YES	NO

CERTIFICATION: I hereby certify on this ____ day of _____, 19 ____, that the information provided in this Semiannual Report is true and correct to the best of my knowledge.

NAME AND TITLE OF AUTHORIZED OFFICIAL

SIGNATURE (Authorized Official)

Check Attachments Submitted:

_____ Capital Utilization (#5 above)
 _____ Current Loan Board Membership (#14)
 _____ Copy of Audit (#16)
 _____ Audit Explanation (#17)
 _____ Annual RLF Plan Certification (#18)

INSTRUCTIONS FOR COMPLETION OF EDA'S SEMIANNUAL REPORTS FOR REVOLVING LOAN FUND GRANTS

The instructions below are in outline form and correspond to identical items in the Semiannual Report. Complete the Semiannual Report by filling in the spaces and responding to the questions. On page one of the Report, indicate the reporting period in the upper right hand corner. The reporting periods end on September 30 and March 31, and all data entries are to be effective with these ending dates. Submit completed Reports to the EDA regional office by November 1 and May 1, respectively. DO NOT INCLUDE IN

PARTS 1-3 OF THE REPORT ANY DATA ON INITIAL LOANS UNDER A SECTION 209 SSED GRANT/LOAN; LIST THESE ITEMS SEPARATELY IN PART 4 ONLY.

PART I: PORTFOLIO STATUS

A. Status of Direct Loans: Show the current status of all direct RLF loans that have been closed. DO NOT include approved loans that have not been closed. In column two, "RLF \$ Loaned," include only the funds loaned by the RLF, including EDA and grantee matching funds, NOT the financing provided by other lenders.

1. **Total Loans Made:** Enter the total number and dollar amount of all RLF loans

closed to date. Under column two, "RLF \$ Loaned," the amount should always represent the original loan amount.

2. *Fully Repaid:* Enter the number and original dollar amount of RLF loans that have been fully repaid.

3. *Current Loans:* Enter the number and original dollar amount of RLF loans that are current on RLF loan payments. In column three, "RLF Principal Outstanding," enter the principal balance outstanding for current RLF loans.

4. *Delinquent:* Enter the number and original dollar amount of RLF loans that are delinquent. For this report, a "delinquent" loan is defined as one that is up to 60 days past due. Enter also the principal balance outstanding on the delinquent loans. (If a previously delinquent borrower is now current, or making payments in accordance with an amended note and payment schedule, show this loan as current).

5. *In Default:* Enter the number and original dollar amount of RLF loans that are in default. For this report, a "default" is defined as any loan that is over 60 days past due but not written off. (An RLF grantee may, at its option, classify a loan as defaulted if it is under 60 days past due. If a previously defaulted loan has been rewritten and/or the borrower is now current, the loan should be shown as current). Enter the principal balance outstanding on defaulted loans.

6. *Total Active Loans:* On line 6, enter the sum of lines 3, 4, and 5 to obtain the number, amount and principal outstanding for Total Active Loans. (Total Active Loans are defined as loans that are either current, delinquent or in default—exclusive of loans that have been fully repaid or written off).

7. *Total Written Off:* Enter the aggregate number and original amounts of defaulted loans that have been written off. Enter also the principal balance outstanding on loans written off or the actual amount lost, whichever is smaller.

B. *Status of Loan Guarantees:* The same criteria as above apply to the Status of Loan Guarantees. In column two, note that the "RLF \$ Reserved" are the RLF dollars that are actually set aside and held in reserve to cover any losses on guaranteed loans. In column three, "Total Amount Guaranteed" is the amount of the original loan that is/was guaranteed by the RLF. In column four, "Current Exposure" is the dollar amount of the RLF's contingent liability as of the date of the current report; this amount is usually computed by multiplying the percent of the original guarantee by the outstanding loan balance.

PART II: PORTFOLIO SUMMARY

A. *Summary of Loan Activities:* For each listed item, provide information on both Total and Active RLF loans closed to date. Total Loans include loans that are current,

delinquent and in default, as well as those that have been fully repaid and written off. Active Loans include only current delinquent and defaulted loans, specifically those included in A.3-5. and B.3-5., Part I, page one, of the Semiannual Report.

1. *# RLF Loans:* Enter the number of RLF loans closed for both Total Loan (I.A.6. and I.B.6., page one) categories. Be sure to include the number of both direct and guaranteed loans closed.

2. *RLF \$\$ Loaned:* Enter the amount of RLF dollars loaned for both Total Loan (I.A.1. and I.B.1., page one) and Active Loan (I.A.6. and I.B.6., page one) categories. For loan guarantees, use column three, "Total Amount Guaranteed," for the RLF dollar amount loaned.

3. *Non-RLF \$\$ Leveraged by RLF:*

a. *Private:* Enter the Private Dollars Leveraged for both Total and Active Loan categories. Unless stipulated otherwise in the grant agreement, RLF loans must be used to leverage private investment of at least two dollars for every one dollar of RLF investment. Private dollars leveraged include private financing and private investments provided to the "project" in which the RLF is an integral component. A "project" is defined as an activity consisting of inter-related components which share a common goal. Private investments include both cash provided to the project and donated assets which come from outside the borrowing enterprise. For donated assets, only the equity in the assets (defined as the assets' market value less any security interest) may be counted in the leverage ratio. For purposes of calculating private dollars invested, 90 percent of the guaranteed portions of SBA 7(a) and SBA 504 debenture loans may be included. As a reminder, the RLF must fill a legitimate financing gap in the project for the private funds to be considered "leveraged dollars".

b. *Other:* Enter any Other investments Leveraged for both Total and Active Loan categories by the RLF loan in the "project", including other public financing (e.g., HUD-CDBG, USDA-IRP loans, etc.).

4. *Total Project Financing:* Enter the sum of RLF dollars loaned and non-RLF dollars leveraged by the RLF, items II.A.2. plus II.A.3.c.

5. *Private Sector Jobs:* Enter the number of jobs created and the number of saved jobs for both Total and Active loan categories. In tallying jobs, only permanent and direct jobs may be counted; part-time jobs should be converted to full-time equivalents (by summing the total hours worked per week for all part-time employees and dividing by the standard hourly work week for full-time employees, normally 35-40 hours). Job information data should be collected at least annually. For seasonal businesses, more frequent collection of job data is usually necessary to

obtain realistic employment figures for an annualized average.

Grantees should use the following definitions in completing the job information section of this report:

a. *Actual Created Jobs:* A job is counted as “created (actual)” if it was created as a result of and attributable to the RLF loan project, and has been verified by the borrower (or grantee) as actually created. Jobs are usually verified by requesting the borrower to complete a questionnaire at least on an annual basis indicating the number of jobs actually created and attributable to the RLF project, or by the grantee performing an on-site job count. Other job data should also be requested from the borrowers in order to complete Part IV of the Report. The documentation for job counts should be placed in the project files.

Created jobs may be credited if the jobs were created within five years of loan disbursement or, if construction is involved, within five years after construction completion. All jobs credited must be attributable to the RLF project. A created job must be removed from the credited created jobs if the job fails to last at least 18 months. Any job which meets the creditable job created criteria is counted as part of the total actual jobs created permanently, regardless of the status of the loan.

For loans that have been paid in full, grantees may use the job information data that is on file provided there is adequate confidence in the reliability of the data. If there is a question on the reliability, the data should be verified by the next semi-annual reporting period.

b. *Saved Jobs* are existing jobs where it can be documented that without the RLF assistance the jobs would have been lost.

Exception—*Created/Saved Jobs Subsequently Lost:* If an RLF borrower subsequently ceases business (or closes a segment of its business) thereby eliminating previously created or saved jobs, these jobs may continue to be counted in the Semiannual Report only if they were maintained for a minimum of 18 months prior to the loss.

6. *RLF \$\$ Loaned for Fixed Assets:* Enter for both Total and Active loan categories, the amount of closed RLF loans that were used for the purchase, installation or construction of fixed assets. If a single RLF loan was used jointly for fixed asset and working capital purposes, only the fixed asset amount should be reported on this line. For a guaranteed loan that was used jointly for fixed assets and working capital, multiply the percent of the original loan that is/was guaranteed by the amount of the loan that was used for fixed assets.

7. *RLF \$\$ Loaned for Working Capital:* Enter for both Total and Active loan categories, the amount of closed RLF loans that were used for working capital purposes as defined

by generally accepted accounting principles. Consistent with item II.A.6. above, include on this line only the amount or portion of a RLF loan that was actually used for working capital purposes. (The amounts on this line plus the amounts in II.A.6. should equal the total RLF dollars loaned in item II.A.2. for both Total and Active loans, respectively).

8. *RLF \$\$ Loaned for Start-up, Expansion & Retention:* Enter for both Total and Active loan categories, the amount of RLF loans that were used for Start-up loans, Expansion loans and Retention loans. Each loan in the RLF portfolio is to be categorized as either a Start-up, an Expansion or a Retention loan. A Start-up loan is one to a new business that has limited or no prior operating history. An Expansion loan involves an existing operating company that will expand operations and create jobs. A Retention loan is where the existing jobs of the company are “saved” as a direct result of the RLF assistance. [The sums of these loan categories (8.a. + 8.b. + 8.c.) should equal the total RLF dollars loaned in item II.A.2. for both Total and Active loans, respectively].

9. *RLF \$\$ Loaned for Industrial, Commercial & Service:* Enter for both Total and Active loan categories, the dollar amount of closed RLF loans that went to Industrial, Commercial and Service projects. All RLF loans should be placed in one of these three categories, which are defined below and which utilized the Standard Industrial Classification (SIC) Manual as a guide:

Industrial projects include manufacturing, agriculture, forestry, fishing, mining, and construction businesses—essentially businesses engaged in the production of a product.

Commercial projects include retail and wholesale trade businesses.

Service projects include businesses which provide a service to individuals or businesses, i.e., those not engaged in the production of a product or the sale of merchandise.

10. *RLF \$\$ Loaned for Minority Businesses:* Enter for both Total and Active loan categories, the amount of closed RLF loans that went to minority-owned businesses. To be considered minority-owned, a company must be at least 51 percent owned by African-Americans, Hispanics, Asians and/or Indians.

11. *RLF \$\$ Loaned for Women-owned Businesses:* Enter for both Total and Active loan categories, the amount of closed RLF loans that went to women-owned businesses. Include only firms with at least 51 percent ownership by women.

12. *Other:* Enter for both Total and Active loan categories, the amount of closed RLF loans that went to a targeted use identified in the RLF Plan but not included above.

B. *Comparison of RLF Portfolio to RLF Plan:* As indicated in the narrative in the Semi-annual Report, use the RLF Plan to obtain the applicable ratios and percentages for

completing the first column. For column two (Total Loans) and column three (Active Loans), use the appropriate figures from Part II.A. to compute the ratios and percentages requested. The formula for each item is listed in the brackets next to that item. [As an example, item #1—Cost per Job, is computed by dividing the figures on line A.2. by those on line A.5.d. (from Part II) for both Total and Active loans, respectively].

PART III: PORTFOLIO FINANCIAL STATUS

A. *RLF Funding Sources:*

1.–3. Enter on lines one through three the total funds committed to the RLF by funding source, regardless of whether the funds have been drawn into the RLF. Outside of the EDA funds, the funding categories will include either funds provided solely by the grantee or from “other” sources, e.g., CDBG, state, or private donations for the specific use of the RLF. Specify the funding source if “other”.

4. Enter the sum of all funding sources, items III.A.1. through III.A.3. inclusive.

B. *Program Income Earned to Date:*

5. Enter the total interest earned directly from RLF loans. This amount should equal the aggregate interest earned from individual loans which are listed in Part IV.

6. Enter interest earned from deposits and investments of:

a. RLF loan payments, including principal and interest;

b. RLF loan fees, including origination, servicing and processing fees, late fees and penalties; and

c. Advances of local matching funds and EDA funds. EDA funds must be timed to meet the actual, immediate disbursement needs of the RLF borrowers. Otherwise, grant funds plus any interest earned thereon must be returned to EDA. (Note that grantees may deduct and retain a portion of such earned interest for administrative expenses up to the maximum amounts allowed under either 15 CFR Part 24 or OMB Circular A-110 or its implementing Department regulation, as applicable).

7. Enter the aggregate of all fees earned from RLF loans from processing, servicing, closing, late fees and any other loan-related earnings.

8. Enter the sum of III.B.5. through III.B.7., inclusive.

9. Enter the amount from III.B.8. that has been used to cover eligible RLF administrative expenses to date. (Time cards are to be maintained for all direct labor costs charged against RLF Program Income. If indirect costs are charged against the RLF, the grantee must have an indirect cost allocation plan). Inasmuch as RLF administrative costs can only be reimbursed from RLF income earned in the same accounting period, available RLF income earned in a current period may be set aside for administrative

costs which will be incurred over the remainder of the period (Refer to Section VII. of the Administrative Manual for additional information).

10. Subtract the amount on line III.B.9. from III.B.8. and enter the difference here. Do not deduct amounts set aside for future administrative expenses. Lines III.B.8 less line III.B.9. should equal the amount of line III.B.10; if not, explain on separate page. Note that if the grant recipient anticipates using any of the available RLF income earned in the current period during the remainder of the period, it may deduct this from the amount otherwise reported in the space. Conversely, if the recipient is certain that it will not need any of the available RLF income during the remainder of the period, it should include this amount in the figure reported as RLF Income added to the RLF for Lending. Any RLF income on hand at the end of a period must be added to the RLF Capital Base for lending purposes.

(Note: References to Program Income in B.8. through B.10. should be interpreted to mean RLF Income as used in the RLF Administrative Manual).

C. *Status of RLF Capital:*

11. Self-explanatory (enter the amount from III.A.4.).

12. Self-explanatory (enter the amount from III.B.10.).

13. Self-explanatory (enter the sum of the amounts lost from direct loans and guaranteed loans, from I.A.7. and I.B.7., page 1 respectively).

14. Self-explanatory (enter the sum of III.C.11. and III.C.12., less III.C.13.).

D. *Current Balance Available for New Loans:*

15. Self-explanatory (enter the RLF principal outstanding from I.A.6., page 1).

16. Self-explanatory (enter the total RLF dollars reserved for loan guarantees, which are not available for lending, from I.B.6., page 1).

17. Self-explanatory (deduct amounts shown in III.D.15. and III.D.16. from III.C.14.).

18. Enter the aggregate amount of RLF funds that have been approved and committed but not closed nor disbursed.

19. Self-explanatory (enter the amount in III.D.17. less III.D.18.).

20. Current Balance Available Percentage—applies only to RLF's that have been fully disbursed. Enter the percent that is obtained by dividing the amount in III.D.19. by the amount in III.C.14.

21. Insert the Current Balance Available Percentage (same calculation as in #20 above), but for the preceding six month period obtained from the previous Semiannual Report.

(Note: The percentages obtained in III.D.20. and III.D.21. are used to evaluate compliance with EDA's Excess Retention Policy established in 1988. If the percentages in III.D.22. and in III.D.23. both exceed 25 percent, the

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grantee is in violation of the policy and is required to submit an addendum to the report explaining the reasons for the violation and the steps it proposes to take to reduce the percentage below 25 percent. Subsequently, the grantee may be required to submit the EDA share of any amount over 25 percent, which normally will be made available to the grantee for a time period established by EDA. Funds not used during this time period may become permanently unavailable to the grantee).

PART IV: PORTFOLIO LOAN LIST

Self-explanatory.

13 CFR Ch. III (1–1–00 Edition)

**PART V: MISCELLANEOUS INFORMATION &
CERTIFICATION**

A. *Recent Loan Activity:*

1.–4. Self-explanatory.

B. *Capital Utilization:* (Section X. of RLF Administrative Manual)

5.–7. Self-explanatory.

C. *RLF Income & Expenses:* (Section VII. of RLF Administrative Plan)

8.–12. Self-explanatory.

D. *Administration:*

13.–17. Self-explanatory.

E. *Annual RLF Plan Certification:* (Section VIII. of the RLF Administrative Manual and Section D.03. of the Standard Terms and Conditions)

18. Self-explanatory (Required only once a year).

ANNUAL REPORT FOR EDA-FUNDED RLF GRANTS

Grantee Name: _____ Period Ending _____

Project No. _____ Contact Person: _____

Phone: _____

A. PORTFOLIO FINANCIAL STATUS		
1. Total RLF Funding (EDA + Matching funds)	\$	
2. Total RLF Income Earned	\$	
3. Total RLF Income Expended for Administrative Costs	\$	
4. RLF Income in #2 that is set aside for Current Period Expenses	\$	
5. Total Losses on Direct and Guaranteed Loans	\$	
6. RLF Capital Base [(1+2) less (3+4+5)]	\$	
7. RLF Loan Principal Outstanding	\$	
8. RLF \$\$ Reserved for Guarantees	\$	
9. RLF Loan Commitments Not Disbursed	\$	
10. RLF Capital Utilized [7+8+9]	\$	
11. RLF Capital Utilization Rate [10 / 6]		%
12. Same as #11 but for Preceding 6-Month Period		%

B. RECENT LOAN ACTIVITY (Last 12 Months Only)	
13. # Applications Received	
14. a. # Applications Received from Minority-owned firms	
b. # Applications Received from Women-owned firms	
15. # Loans Closed	
16. a. # Loans Closed from Minority-owned Firms	
b. # Loans Closed from Women-owned Firms	

C. Portfolio Status	
<i>DIRECT LOANS:</i>	
17. a. Total RLF \$\$ Loaned	\$
b. Total # Loans made by the RLF	
18. Total Active Loans	\$
19. Principal Outstanding	
a. Current Loans	\$
b. Delinquent Loans (< 60 days)	\$
c. Delinquent Loans (> 60 days)	\$
20. Total Written-Off	\$
21. Total Non-RLF \$\$ Leveraged by RLF & Leverage Ratios	
a. Private	\$
b. Other	\$
c. Total Leveraged (Private + Other)	\$
<i>GUARANTEED LOANS:</i>	
22. Current RLF \$\$ Exposed (<i>active loans only</i>)	\$
23. RLF \$\$ Reserved (<i>active loans only</i>)	\$
24. Total # of Actual Jobs Created and Saved	

D. ADMINISTRATION		circle or
complete		as
appropriate		
25. Any key Staff Turnover last 12 Months? List position(s):	Yes	No
26. Attach a list of the current RLF Loan Board membership by name, occupation, race and gender.		
27. Indicate the ending period of the most recent independent Audit covering the recipient and whether Single or Program Specific Audit.		
28. Attach the Audit in #27 if it was not previously submitted to EDA		
29. If the Audit in #27 did not cover either the most recent or the prior fiscal-year period, is an explanation attached? (<i>Circle One</i>)	Yes	No Not Applicable

EXHIBIT E (Rev. 12/98)

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D. ADMINISTRATION		circle or complete as appropriate
30. Enter the ending date of the accounting period which has been selected to determine the amount reported in #4 above in accordance with Section VII.C. of the RLF Administrative Manual.		

E. CAPITAL UTILIZATION (Section X of RLF Administrative Manual)		circle or complete as appropriate
31. If the percentages in both #11 and #12 above are less than 75%, is an explanation attached discussing proposed actions (including target dates and goals) to reduce the amount of excess funds on hand?	Yes	No
32. If both #11 and #12 are less than 75%, list the amount of excess funds subject to sequestration.	\$	
33. List any amount in #31 that has been sequestered in a separate account.	\$	
F. ANNUAL RLF PLAN CERTIFICATION (Section VIII of RLF Administrative Manual and Section D.03 of Standard Terms and Conditions)		circle or complete as appropriate
34. Is the required <i>ANNUAL</i> RLF Plan Certification attached? If "no," indicate the date it will be submitted: _____	Yes	No

CERTIFICATION: I hereby certify on this ____ day of _____, 19____, that the information provided in this Annual Report is true and correct to the best of my knowledge.

NAME AND TITLE OF AUTHORIZED OFFICIAL

SIGNATURE (Authorized Official)

Check Attachments Submitted:

_____ Capital Utilization (#31 above)	_____ Audit Explanation (#29)
_____ Current Loan Board Membership (#26)	_____ Annual RLF Plan Certification (#34)
_____ Copy of Audit (#28)	

INSTRUCTIONS FOR COMPLETION OF EDA'S ANNUAL REPORTS FOR REVOLVING LOAN FUND GRANTS

These instructions are for completion of the Annual Report form for EDA revolving loan fund (RLF) grants. The Annual Report is an abbreviated version of the Semiannual Report. RLF grantees that are reporting on a semiannual basis are eligible to apply for graduation to this streamlined report one year after full disbursement of the initial round of RLF capital.

A. PORTFOLIO FINANCIAL STATUS AND CAPITAL UTILIZATION

1. Enter the total funds committed to the RLF. Outside of EDA funds, matching funds may include funds provided solely by the grantee or from other sources, e.g., CDBG, state or private donations for the specific use of the RLF. Exclude any funding commitments that may have been removed from the RLF, as approved by EDA.

2. Enter the Total RLF Income earned by the RLF to date. RLF Income, as defined in Section VII. of the RLF Administrative Manual, includes:

- a. Total interest earned directly from RLF loans.
- b. Interest earned from deposits and investments of:
 - RLF loan payments, including principal and interest;
 - RLF loan fees, including origination, servicing and processing fees, late fees and penalties; and
 - Advances of local matching funds and EDA funds. EDA funds must be timed to meet the actual, immediate disbursement needs of the RLF borrowers. Otherwise, grant funds plus any interest earned therein must be returned to EDA. (Note that grantees may deduct and retain a portion of such earned interest for administrative expenses up to the maximum amounts allowed under either 15 CFR Part 24 or OMB Circular A-110 or its implementing Department regulation, as applicable.

3. Enter the amount from A.2. that has been used to cover eligible RLF administrative expenses to date. (Time cards are to be maintained for all direct labor costs charged against RLF Program Income. If indirect costs are charged against the RLF, the grantee must have an indirect cost allocation plan). In as much as RLF administrative costs can only be reimbursed from RLF income earned in the same accounting period, available RLF income earned in a current period may be set aside for administrative costs which will be incurred over the remainder of the period (Refer to Section VII. of the Administrative Manual for additional information).

4. Enter the amount of any available RLF Income earned in a current period which

may be set aside for future administrative costs incurred over the remainder of the period. If, however, the selected period ends on September 30, funds can not be set aside without EDA approval since any RLF Income that is not used for administrative costs during the period in which it is earned must be added to the RLF Capital Base at the end of the period.

5. Enter the cumulative Losses on Direct and Guaranteed Loans for those loans written-off.

6. Calculate the current level of the RLF's Capital Base by adding the amounts entered in #1 and #2, and subtracting from this sum the amounts in #3, #4 and #5. The RLF Capital Base represents the aggregate amount of capital potentially available for lending.

7. Enter the amount of Loan Principal Outstanding on Direct RLF Loans.

8. Enter the amount of RLF dollars that are required to be set aside or reserved for RLF guarantees of other loans. If not applicable, enter N/A.

9. Enter the aggregate amount of RLF funds that have been approved and committed but not closed nor disbursed.

10. Calculate the amount of RLF Capital Utilized, i.e., RLF capital outstanding and committed, by summing the amounts in #7, #8 and #9.

11. Calculate the RLF Utilization Rate by dividing #10 (RLF Capital Utilized) by #6 (RLF Capital Base). This indicates the percentage of RLF capital in use for comparison with the Capital Utilization Standard as discussed in Section X. of the Administrative Manual. Persistent noncompliance with the Standard could require sequestration of excess funds, remittance of interest earned on sequestered funds, and eventual loss of excess funds if not placed in use within a reasonable period of time.

12. The RLF Capital Utilization Rate is calculated every six months for the periods ending March 31 and September 30, in accordance with Section X.C. of the RLF Administrative Manual.

B. RECENT LOAN ACTIVITY

13-16. As appropriate, enter the number of applications received and loans closed for the last 12 month period. Also enter the number of applications received and the number of loans closed from Minority-owned and Women-owned firms. Ownership is defined as controlling interest of 51% or more. A loan is considered closed when all loan documents have been signed.

C. PORTFOLIO STATUS

17. Enter the total number and original dollar amount of all RLF loans made to date.

18. Enter the amount of principal outstanding for Total Active Loans. (Total Active Loans are defined as direct loans that

are either current, delinquent or in default—exclusive of loans that have been fully repaid or written off).

19. For active loans only, enter the principal outstanding on direct loans that are current and those that are delinquent. Segregate delinquent loans into two categories, those less than or equal to 60 days past due and those more than 60 days past due. For this report, a “delinquent” loan is defined as one that is up to 60 days past due. (If a previously delinquent borrower is now current, or making payments in accordance with an amended note and payment schedule, show this loan as current).

20. Enter the total principal balance outstanding on direct loans written-off or the actual amount lost, whichever is smaller.

21. Enter the total non-RLF dollars leveraged (Private & Other) and corresponding leverage ratios in conjunction with the RLF direct loans. Unless stipulated otherwise in the grant agreement, RLF loans must be used to leverage private investment of at least two dollars for every one dollar of RLF investment. Private dollars leveraged include private financing and private investments provided to the “project” in which the RLF is an integral component. A project is defined as an activity consisting of inter-related components which share a common goal. Private investments include both cash provided to the project and donated assets which come from outside the borrowing enterprise. For donated assets, only the equity in the assets (defined as the assets’ market value less any security interest) may be counted in the leverage ratio. For purposes of calculating private dollars invested, 90 percent of the guaranteed portions of SBA 7 (a) and SBA 504 debenture loans may be included. As a reminder, the RLF must fill a legitimate financing gap in the project for the private funds to be considered “leveraged dollars”.

Other investments leveraged by the RLF in the project may include other non-RLF dollars such as HUD-CDBG, USDA-IRP loans, etc.

22. For active loans provided by other lenders and guaranteed by the RLF, enter the contingent liability of the RLF on outstanding loan principal, i.e., the current RLF exposure on all active RLF guarantees. This amount is usually computed by multiplying the percent of the original guarantee by the outstanding loan balance.

23. For active loans provided by other lenders and guaranteed by the RLF, enter any amounts of RLF funds that are actually set aside and held in reserve to cover any losses on guaranteed loans.

24. Enter the total number of jobs created and saved over the life of the RLF. In tallying jobs, only permanent and direct jobs may be counted; part-time jobs should be converted to full-time equivalents (by sum-

ming the total hours worked per week for all part-time employees and dividing by the standard hourly work week for full-time employees, normally 35-40 hours). Job information data should be collected at least annually. For seasonal businesses, more frequent collection of job data is usually necessary to obtain realistic employment figures for an annualized average.

Grantees should use the following definitions in completing the job information section of this report:

a: *Actual Created Jobs*: A job is counted as “created (actual)” if it was created as a result of and attributable to the RLF loan project, and has been verified by the borrower (or grantee) to complete a questionnaire at least on an annual basis indicating the number of jobs actually created and attributable to the RLF project, or by the grantee performing an on-site job count. The documentation for job counts should be placed in the project files.

Created jobs may be credited if the jobs were created within five years of loan disbursement or, if construction is involved, within five years after construction completion. All jobs credited must be attributable to the RLF project. A created job must be removed from the credited created jobs if the job fails to last at least 18 months. Any job which meets the creditable job created criteria is counted as part of the total actual jobs created permanently, regardless of the status of the loan.

For loans that have been paid in full, grantees may use the job information data that is on file provided there is adequate confidence in the reliability of the data. If there is a question on the reliability, the data should be verified by the next annual reporting period.

b: *Saved Jobs* are existing jobs where it can be documented that without the RLF assistance the jobs would have been lost.

Exception—*Created/Saved Jobs Subsequently Lost*: If an RLF borrower subsequently ceases business (or closes a segment of its business) thereby eliminating previously created or saved jobs, these jobs may continue to be counted in the Annual Report only if they were maintained for a minimum of 18 months prior to the loss.

D. ADMINISTRATION

25-30. Self-explanatory.

E. CAPITAL UTILIZATION

31-33. Self-explanatory (Refer to Section X. of the RLF Administrative Manual).

F. RLF PLAN CERTIFICATION

34. Self-explanatory (See Section VIII. of the RLF Administrative Manual and Section D.03. of the RLF Standard Terms and Conditions for additional details).

APPENDIX D TO PART 308—SECTION 209
ECONOMIC ADJUSTMENT PROGRAM
REVOLVING LOAN FUND GRANTS;
AUDIT GUIDELINES

OMB Approval No. 0610–0095 Approval expires
07/31/99

BURDEN STATEMENT FOR REVOLVING LOAN
FUND AUDIT MANUAL

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

The information is required to obtain or retain benefits from the Economic Development Administration pursuant to Economic Development Administration Reform Act, Public Law 105–393. The reason for collecting this information is to enable the Economic Development Administration to monitor revolving loan fund projects for compliance with Federal and other requirements. No confidentiality for the information submitted is promised or provided except that which is exempt under 5 U.S.C. 552(b)(4) as confidential business information.

The public reporting burden for this collection is estimated to average 12 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Economic Development Administration, Herbert C. Hoover Building, Washington, DC 20230, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

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SECTION 209 ECONOMIC ADJUSTMENT PROGRAM
REVOLVING LOAN FUND GRANTS AUDIT
GUIDELINES

I. PURPOSE

This document describes the audit requirements for revolving loan fund (RLF) grants funded under the Section 209 Economic Adjustment Program of the Economic Development Administration (EDA). It provides an overview of relevant Office of Management and Budget (OMB) circulars and other Federal regulations as they relate to administrative and audit requirements for EDA RLF grants. It also discusses costs that may be eligible under an RLF grant program and requirements for records retention. It is intended to supplement applicable OMB circulars and Federal regulations. If there is a conflict between information contained in this document and the OMB circulars or Federal regulations, the latter shall prevail. In the absence of a conflict, EDA reserves the right to limit Federal standards.

This document is intended for grant recipients and for independent auditors as an aid in understanding the audit and compliance requirements for EDA RLF grants. Each recipient of an EDA RLF grant is responsible for reading this document and providing it to the independent auditor prior to the start of an audit. Failure to make this information available to the independent auditor could result in an unacceptable audit report.

II. PROGRAM OBJECTIVES

RLF grants are administered under EDA's Section 209 Program, which was created in 1974 by an amendment to the Public Works and Economic Development Act of 1965 (PWEDA), to provide grant assistance to help communities adjust to sudden and severe economic dislocations (SSED) and long-term economic deterioration (LTED). EDA Section 209 grants may be used for business development assistance, planning, research,

technical assistance, training, infrastructure, and other development activities which meet the purpose of the program.

RLF grants provide capital for loan pools which finance business development activities consistent with local economic development strategies. Loan repayments, plus interest and other related income, create a revolving source of capital to finance other business enterprises. RLF loans are used to stimulate economic activity and to provide financing to businesses when private credit is unavailable to complete a project.

III. PROGRAM PROCEDURES

Priority consideration for RLF funding is given to those proposals which have the greatest potential to benefit areas experiencing or threatened with substantial economic distress. Proposals are evaluated based on conformance with statutory and regulatory requirements, the economic adjustment needs of the area, the merits of the proposed project in addressing those needs, and the applicant's ability to manage the grant effectively. Each approved RLF grant is operated in accordance with an RLF Plan which is part of the grant agreement. The RLF Plan summarizes the RLF's strategic objectives and the operational procedures to carry out the purpose of the grant.

IV. PROGRAM HISTORY

EDA awarded its first RLF grant in 1975. To date, the Agency has awarded more than 700 grants aggregating in excess of \$500 million for the establishment or recapitalization of RLFs nationwide. In turn, RLF grantees have made more than 7,200 loans to private sector businesses, which loans have either leveraged or have the potential for leveraging in excess of \$1.9 billion private capital based on a private investment to total RLF monies loaned ratio of 3.83:1. There are generally two types of RLF grants, those established as RLFs from the initial disbursement of grant funds, and those established only after repayments are received from business loans originally funded from grants. Most RLF grants are of the first type.

RLF programs are operated by local governments, regional development corporations, States and other non-profit organizations. EDA RLF grants normally require a matching contribution from local sources. Historically, the local match contribution has averaged 25% of an RLF's capitalization, but waivers have been extended in special situations such as natural disasters. The average EDA RLF grant was capitalized at just over \$1 million in total assets. While the size of individual loans extended by these grant recipients vary markedly, the typical RLF loan has averaged \$70,000 over time.

V. FREQUENCY OF AUDITS

Each RLF grant recipient shall have an audit performed annually for the duration of the RLF program except in the following limited circumstances which may permit biennial audits:

- A state or local government recipient that adopted a mandatory, constitutional or statutory requirement for less frequent audits prior to January 1, 1987, which requirement still remains in effect; or
- A non-profit recipient that had biennial audits for all biennial periods ending between July 1, 1992 and January 1, 1995.

VI. WHEN AN AUDIT IS REQUIRED

Pursuant to the Single Audit Act Amendments of 1996 (P.L. 104-156) and OMB Circular A-133, audits are required of all State, local government and non-profit corporation RLF grant recipients that expended total Federal awards of at least \$300,000 in a given fiscal year. For all RLF grants, the calculation of RLF expenditures will include the beginning balance of all outstanding loans plus the current year's loan and loan-related expenditures. With the exception of newly awarded grants and limited circumstances listed in Paragraph V. herein, the majority of RLF grant recipients will require an annual audit.

To calculate the total RLF expended, follow the information provided in the box below. Note that only the Federal share (exclude the matching fund share) of the amount calculated should be used for the determination of an audit. Audit procedures, however, must encompass both the Federal and any matching funds which comprise an RLF.

- The year's beginning balance of outstanding RLF loans; plus
- RLF loan expenditures during the fiscal year; plus
- The amount of RLF Income¹ earned and expended on eligible administrative expenses during the fiscal year.

VII. TYPES OF AUDITS

Entities which spend \$300,000 or more in Federal awards will be required to have either (i) a program-specific audit or (ii) a single audit. An entity can elect a program-specific audit if all funds expended come from only one Federal program. An entity must have a single audit in a fiscal year in which it spends funds from more than one Federal program. These guidelines are not intended to be a complete manual of procedures, nor are they intended to supplant the auditor's

¹ RLF Income includes interest earned on loans, interest earned on accounts holding RLF funds not needed for immediate lending, loan fees received from borrowers, and other income generated from RLF activities.

judgment of the work required for either the program-specific audit or a single audit which includes coverage of an EDA RLF. The auditor should refer to OMB Circular A-133 for a detailed listing of requirements for these types of audits. These guidelines are designed to discuss special considerations for audits of RLFs.

A. Program Specific Audit

A program-specific audit is an audit of one program performed in accordance with Federal laws and regulations and any audit guides available for that program. There is not a program-specific audit guide written for the RLF program. Since a program-specific audit guide is not available, the auditee and auditor shall have basically the same responsibilities for the RLF program as they would have for an audit of a major program in a single audit. Section VIII of these guidelines describes some special considerations for auditing an EDA RLF. OMB Circular A-133, Section 235 provides instructions for completing a program-specific audit.

B. Single Audit

A single audit covers all Federal awards received and expended during an organization's fiscal year. Unlike the program specific audit, this type of audit requires a financial statement audit of the grant recipient. A single audit is performed by an independent auditor who meets the general standards specified in generally accepted government auditing standards.

Attachment I provides a current list of applicable audit-related documents with which the auditor should become familiar. Since accounting requirements and reference materials are subject to periodic revisions, grant recipients and auditors are responsible for utilizing the most current reference information available.

VIII. SPECIAL CONSIDERATIONS FOR SINGLE AUDITS OF RLFs

A. Schedule of Expenditures of Federal Awards

The auditee is required to report certain information in this schedule including: (1) the identity of all Federal award programs by program title and by catalogue number listed in the Catalog of Federal Domestic Assistance (CFDA) and (2) the total expenditures for each Federal award program by grantor agency. For EDA RLF grants, the program title is "Special Economic Development and Assistance Programs—[either Sudden and Severe Economic Dislocation (SSED) or Long-Term Economic Deterioration (LTED)] Revolving Loan Fund." The CFDA number is "11.307" for both SSED and LTED grants. To assist program officials, it is helpful to include the number of each EDA RLF grant in the schedule. The method for

calculating the total Federal expenditure amount to be reported on the schedule is shown in Section VIII.C. below.

Note that in the third and fourth digits of each grant number, an SSED grant is denoted by the number "19", and an LTED grant by the number "39". Exceptions include numerical identification of defense or disaster-related RLFs which may have several variations as determined by fiscal year or specific disaster program appropriations.

B. Criteria for Determining Major Programs

Federal award programs must be identified as Major Programs through a risk-based approach described in OMB Circular A-133. Prior to the issuance of the revised OMB Circular A-133, a Major Program was defined solely in monetary terms. The new risk-based approach also requires that the auditor consider the current and prior audit results and the inherent risk of the program in making a determination of Major Programs subject to audit. Major Programs require more extensive audit procedures than Other Federal Programs.

C. Calculating "Total Federal Expenditures" For RLF Grants

For RLF grants, "Total Federal expenditures" normally includes only the Federal share of an RLF's expenditures. It is calculated as shown in the box below using only the Federal share of each component.

Determining Total Federal Expenditures²:

- The year's beginning balance of outstanding RLF loans; plus
- RLF loan expenditures during the fiscal year; plus
- The amount of RLF Income³ earned and expended on eligible administrative expenses during the fiscal year.

D. Footnote Disclosure (Schedule)

In addition to reporting the Federal expenditures for an RLF program on the schedule of expenditures of Federal awards, a footnote to the schedule should disclose the value of the loans outstanding at the end of the year.

IX. USE OF ANOTHER ENTITY FOR PROGRAM ADMINISTRATION

A grant recipient may employ the services of another organization to perform certain duties and responsibilities under a grant. In

²If the Federal share of an RLF's total expenditures cannot be readily determined, the total RLF expenditures (including both Federal and matching funds) may be used in lieu of "total Federal expenditures" provided the inclusion of matching funds is disclosed.

³Defined in footnote 1, page 3.

delegating responsibilities, the grant recipient may be responsible for ensuring that the other entity is audited in accordance with OMB Circular A-133 and complies with the grant terms and conditions. The degree of responsibility delegated is the key factor in determining whether another entity is a subrecipient or vendor (and whether an audit is required). Subrecipients are normally required to have an audit performed while vendors would not usually be audited unless program compliance requirements apply to the vendor.

An organization is a subrecipient if it receives or is responsible for RLF funds, and some or all of the following characteristics exist. It is responsible for (i) applicable grant compliance requirements; (ii) programmatic decisions including, but not limited to, approving RLF lending policies, final lending decisions including eligibility determinations, major amendments to loans, and/or foreclosure actions; and/or (iii) its performance is measured against meeting objectives of the program.

An organization is a vendor if it provides services in support of an RLF grant and has the following distinguishing characteristics. It provides agreed services within its normal business operations and provides similar services to other purchasers, it operates in a competitive environment, and program compliance requirements usually do not directly pertain to the services provided. If grant compliance requirements apply to the vendor's activities, the grant recipient is responsible for ensuring compliance by the vendor. This may require monitoring the vendor's activities or requiring an audit of vendor activities as may be appropriate under the circumstances. A vendor is normally responsible only for compliance within the terms of its contract.

An example of a vendor would be a bank or collection company which provides services to the grant recipient merely for the collection of loan payments. This would be considered a vendor relationship because the entity under contract would not be involved with any major program decisions. However, if this entity had expanded responsibilities, such as the final approval authority for loans and foreclosure actions, it would be considered a subrecipient due to the nature and degree of its responsibilities. It would be required to be audited in accordance with OMB Circular A-133, and to comply with the terms and conditions of the grant.

X. REPORTING ENTITY

The definition of a financial reporting entity is based upon the concept of accountability. A reporting entity may consist of a primary unit and component units. The decision to include a component unit in the reporting entity is based on whether (1) the primary unit is financially accountable for

the component unit, and (2) the nature and significance of the relationship between the primary unit and the component unit is such that exclusion would cause the reporting entity's financial statements to be misleading or incomplete.

While it is management's responsibility to define the reporting entity, one of the initial tasks performed by the auditor is to independently determine whether management has properly defined the reporting entity, pursuant to the Government Accounting Standards Board's (GASB) Statement No. 14, The Financial Reporting Entity.

XI. AUDIT REPORT DUE DATES

The audit must be completed and the report package submitted within 9 months following the end of the period audited, unless a longer period has been agreed to in advance. However, for fiscal years ending on or before June 30, 1998, auditees shall have 13 months after the end of the audit period to submit the reporting package. In either case, the required reporting package shall be submitted within 30 days after issuance of the auditor's report to the auditee.

XII. DISTRIBUTION OF THE AUDIT REPORT

The reporting package should be submitted to the Federal Clearinghouse in accordance with the requirements of OMB Circular A-133, Section 320. In addition, an auditee shall submit the reporting package, leaving out the data collection form which is strictly for the Clearinghouse's use, to the EDA regional office responsible for monitoring the RLF.

XIII. AUDITOR SELECTION

In arranging for audit services, grant recipients are required to follow the administrative requirements and procurement standards prescribed in the applicable Federal administrative document found at 15 CFR, Part 24, or OMB Circular A-110. In addition, guidance in selection of an auditor is available in a document entitled "to Avoid a Substandard Audit: Suggestions for Procuring an Audit." This document was developed by the National Intergovernmental Audit Forum and is available from the General Accounting Office at telephone number (202) 512-6000.

XIV. COMPLIANCE GUIDELINES

For both program specific audits and single audits, the auditor is required to determine whether the grant recipient has complied with applicable laws and regulations. Compliance testing involves (1) the testing of specific requirements for individual Federal programs, as available, and (2) the testing of general requirements which are applicable to all Federal programs. In addition, there may be other laws and regulations listed in the grant terms which may apply to

both the grant recipient and to the RLF loan recipients.

OMB has issued a provisional compliance supplement for use with the revised OMB Circular A-133. The provisional compliance supplement addresses 14 types of compliance areas that are generic to all programs. It also addresses specific requirements for about 100 programs. It is not clear whether the RLF program will be included in the compliance supplement.

A. Specific Compliance Requirements

DOC's proposed compliance requirements and suggested audit procedures for EDA Section 209 RLF grants are provided in Attachment 2. Independent auditors should follow these procedures in testing for specific compliance requirements for RLF grants. Comments and suggestions on this material are welcome and should be submitted to the U.S. Department of Commerce, Office of Inspector General, 401 W. Peachtree Street, N.W., Suite 2342, Atlanta, GA 30308.

B. General Compliance Requirements— Supplemental Information

The OMB Compliance Supplements list fourteen general requirements and suggested auditing procedures which are applicable to all Federal assistance awards. For the general requirement listed as "Allowable Costs And Cost Principles," supplemental information is provided below. This information should be considered when testing general compliance requirements.

1. Background

Eligible Costs For RLF Grants: EDA grant funds and matching funds for an RLF must be used in accordance with the purposes specified in the grant agreement. Eligible uses generally include RLF loans and any specified costs listed in the grant agreement (e.g., budgeted audit costs). Unless specifically stated in the grant, the costs to administer an RLF program are not eligible for reimbursement from either the EDA grant or the matching funds.

RLF Income: RLF Income includes interest earned on loans, interest earned on accounts holding RLF funds not needed for immediate lending, loan fees and other income generated from RLF activities. RLF Income may be used only for RLF loans or for eligible expenses necessary to operate an RLF program. RLF Income that is used for RLF administrative expenses is subject to applicable OMB cost principles and to the requirements described below.

Only current period expenses may be expensed against current period RLF Income. Any exceptions to this require EDA approval. The accounting period for determining compliance with this requirement is selected by the grant recipient and may be

either the recipient's or the Federal fiscal year. The accounting period selected is submitted to EDA in the annual or semiannual reports. (Refer to Section VII. of the prevailing EDA RLF Administrative Manual for additional details.)

RLF program funds (including initial grant and matching funds and the repayments of loan principle and RLF Income) should be separately accounted for in the accounting system of each grant recipient. When possible, expenses charged to an RLF program should be categorized in detail at least at the level indicated in the RLF Income and Expense Statement (see Exhibit A of EDA's prevailing RLF Administrative Manual).

Cost Principles: The applicable OMB Cost Principles are found in either OMB Circular A-21, A-87, or A-122. Administrative costs that may be charged against RLF Income will be classified as either direct or indirect costs. Direct costs include those that can be identified specifically with a particular cost objective, such as an RLF program. Indirect costs are those incurred for a common or joint purpose benefitting more than one program or cost objective and are not readily assignable.

Cost Allocation Plans: Costs may be allocated against RLF Income only to the extent that they can be distributed in reasonable proportion to the benefits received, and are supported by a cost allocation plan and formal accounting records which will substantiate the propriety of charges. Indirect costs may not exceed 100% of allowable direct costs as reflected in the cost allocation plan.

Cost allocation plans, which include indirect cost rate proposals, normally must be approved by the cognizant Federal agency. Local governments (OMB Circular A-87 organizations) are required to retain cost allocation plans and/or indirect cost rate proposals at the local level unless the cognizant agency requests submittal for negotiation and approval. All cost allocation plans and/or indirect cost rate proposals must be approved at the local level and must be available to the cognizant agency, if requested. The independent auditor is responsible for reviewing cost allocation plans and/or indirect cost rate proposals to determine the reasonableness and validity of costs charged against different cost objectives or programs.

The Office of Inspector General, U.S. Department of Commerce (OIG), is designated the cognizant agency responsible for the audit, approval and negotiation of cost allocation plans and/or indirect cost rate proposals for most EDA economic development districts, as defined in Title IV of PWEDA. When an EDA district organization allocates costs requiring a cost allocation plan and/or an indirect cost rate proposal, the organization is not required to submit either of these to the OIG unless the OIG is the cognizant agency and requests submittal, or the cost

allocation plan and/or the indirect cost rate proposal is the initial one for the organization. Cost allocation plans and indirect cost rate proposals must be available for review upon demand, if requested.

2. Common RLF Administrative Costs

A description of common administrative costs that may be charged against RLF Income include, but are not limited to, the following:

Advertising/Marketing: Allowable costs for advertising and marketing include costs for media services to recruit RLF personnel, market the RLF program, solicit RLF loan prospects, procure RLF-related goods and services, and sell RLF assets. Eligible costs may also include the cost of printing RLF brochures and travel and other expenses directly related to the promotion of an RLF program.

Audits: The costs of audits conducted in accordance with the grant audit requirements are allowable. The charges may be treated as either direct or indirect costs consistent with the applicable OMB cost principles. Grant and matching funds may be used for audit costs only to the extent listed in the approved grant budget or grant terms. In addition, auditing costs charged against an RLF program may not exceed an RLF's equitable share of the cost.

Bonding: The costs of premiums for fidelity bonds covering employees who handle RLF funds are allowable to the extent that such costs are reasonable and distributed equitably in proportion to the RLF's share of the costs.

Building Space: Rent for building space or the utilization of depreciation or use allowances is an allowable expense subject to the provisions of the applicable OMB cost principles. Maintenance costs are eligible expenses to the extent that they are not otherwise included in rental or other charges for space. See also "Lease Transactions" below.

Capital Expenditures: In accordance with current OMB cost principles, capital expenditures for equipment and other capital assets require prior EDA approval. For state and local governments (OMB Circular A-87), equipment is defined as tangible, personal property having a useful life of more than one year and an acquisition cost which equals the lesser of the capitalization level established by the organization or \$5,000. For nonprofits (OMB Circular A-122 organizations), equipment is defined as tangible, personal property having a useful life of more than two years and an acquisition cost of more than \$500 per unit. The dollar amount for nonprofits is expected to increase when OMB Circular A-122 is revised. In the interim, nonprofits may request EDA to approve an amendment to the grant terms to allow for purchases of capital equipment up

to the lesser of the capitalization level established by the organization or \$5,000.⁴

Where appropriate, an analysis should be made of lease vs. purchase alternatives to determine which would be the most economical and practical procurement method. To be an allowable charge against RLF Income, a capital expenditure must be reasonable and essential for the operation and administration of an RLF program. Such charges must reflect an RLF's use of the equipment based upon an equitable allocation method.

Alternatively, grant recipients may be compensated for the use of equipment and other nonexpendable personal property through depreciation or use allowances subject to the provisions of the applicable OMB cost principles and the requirements herein.

Procurement transactions must be conducted in a manner which provides, to the maximum extent practical, open and free competition consistent with the procurement standards published at 15 CFR Part 24 or in OMB Circular A-110, as applicable. When acquired personal property is no longer needed for RLF activities or is disposed of for upgrading purposes, the RLF should be compensated for its share of the disposition proceeds. Procedures should be established and followed to provide for the highest possible return on property disposition.

Employee Salaries & Fringe: Allowable employee salaries and fringe includes the compensation for personal services including, but not limited to salaries, wages and fringe benefits. Payrolls must be supportable by time and attendance or equivalent records for individual employees. Salaries, wages and fringe benefits of employees chargeable to more than one grant program or other cost objective must be supportable by appropriate time distribution records, or a cost allocation plan, and distributed equitably in reasonable proportion to the benefits received. Compensation for employee services may include only those services performed during the grant period.

The salaries and expenses of the office of the Governor of a State or the chief executive of a political subdivisions thereof, are considered a cost of general government and are unallowable as an expense against RLF Income. The salary and expenses of an executive director of an EDA economic development district are allowable, provided such costs are allocated equitably relative to the benefits derived and the total costs charged

⁴A request for a grant amendment would allow the use of current period RLF Income for current purchases (up to \$5,000 per unit) for equipment, other capital assets, and repairs which materially increase the value or useful life of capital assets and which are essential for the operations and administration of the grantee's RLF program.

against all grant programs does not exceed 100% of the cost item being allocated. Compensation of members of an RLF loan board is discussed under “RLF Loan Board Compensation” below.

Leasing Transactions: The accounting and financial reporting treatment for lease agreements depend on whether the lease is classified as a capital lease or an operating lease.

An *operating lease* is a rental agreement requiring periodic payments for the use of an asset during a given period of time. An operating lease does not transfer a material equity in the property leased. The rent payments under an operating lease are allowable to the extent that the lease rate is reasonable when compared with area market conditions.

A *capital lease* is a rental agreement where the lessee acquires a substantial portion of the rights to an asset. In substance, a capital lease represents the purchase of the asset. Financial Accounting Standards Board (FASB) Statement Number 13, Accounting for Leases, as amended, provides guidelines for capital lease transactions. The periodic payments under a capital lease are reimbursable up to the amount that would be allowed had the organization purchased the property on the date the lease agreement was executed. For example, reimbursable expenses could include depreciation or use allowances, maintenance, taxes and insurance, but excluding any unallowable costs.

For lease agreements between *related parties*, a determination must be made whether the related parties are required to prepare financial reports as a single reporting entity. If reporting as a single entity is required for financial reporting purposes, the assets of the organizations shall be combined, and any reimbursable expenses between the parties shall be computed based upon the cost of ownership. Specific financial statement disclosures pertaining to related parties are required by FASB 57, Related Party Disclosures.

Materials & Supplies: The costs of materials and supplies used during the accounting period for RLF-related activities are allowable expenses.

Outside Professional Services: The costs of RLF-related services necessary and appropriate to prudently administer and protect RLF assets are allowable. Examples of professional service providers include independent accountants, attorneys, appraisers and others who advise RLF operators and who are not officers or employees of the grantee organization or part of the grantee's department (if the grantee is a governmental entity). Professional service providers generally include those who provide loan packaging, underwriting, closing, monitoring, collections, recovery, sale, and/or protection of collateral services. Costs for professional

services are eligible for reimbursement provided they are consistent with the purpose of the grant and allocated equitably based on the benefits derived. (See applicable OMB cost principles for additional information on professional services.)

RLF Loan Board Compensation: RLF loan board members, including advisory board members, who are not employees of the grant recipient, are not eligible for compensation from RLF Income except as may be provided for in the reimbursement of travel costs consistent with the grant recipient's travel policies or in accordance with Federal Travel Regulations (see “Travel” below). Since RLF loan board members usually serve as representatives of their profession or employer organizations, compensation for other than travel-related expenses is not normally allowed. However, if there are exceptional circumstances that warrant consideration of a waiver, EDA approval may be requested.

Training: The costs of training materials, textbooks, fees charged by educational institutions, and travel costs for part-time education of employees to improve their skills and performance in the management, administration and operation of an RLF are allowable. Extended or full-time training is unallowable except when specifically authorized by EDA in advance. Travel costs to attend meetings and professional conferences are allowable when the primary purpose of the meeting or conference is the dissemination of technical information relating to the grant program.

Travel: The costs for transportation, lodging, subsistence and related items incurred by employees who are on travel status for official business related to RLF activities are allowable. Typical travel expenses might include the costs associated with visiting or meeting potential borrowers, servicing and monitoring loan projects, and meeting with bankers, accountants, attorneys and others affiliated with existing or potential RLF borrowers. It may also include the travel costs associated with marketing the RLF program or hiring RLF program personnel.

Travel costs expensed to RLF Income must be applied consistent with the travel provisions established by the grant recipient in its regular operations and with the applicable OMB cost circular. Organizational travel provisions should be documented in a policy manual. In the absence of formal travel policies, the “Federal Travel Regulations” as published in the Code of Federal Regulations shall apply.

For additional information on allowable costs, refer to applicable OMB cost principles or contact the Office of Inspector General, U.S. Department of Commerce, or EDA's Regional or Headquarter's Office.

XV. SECURITIZATION

RLF grant recipients may, with EDA's prior written consent, further the objectives of the RLF through the sale of loans or Securitization⁵ of its loan portfolio. Auditors should determine whether Securitization has occurred, and if so, whether EDA consent was obtained.

XVI. ADMINISTRATIVE COST AND LOAN RECORDS RETENTION

A. Administrative Cost Records

Records of administrative costs incurred for activities relating to the operation of the RLF shall be retained for three (3) years from the actual submission date of the last Semiannual or Annual Report which covers the period during which such costs were claimed, or for five (5) years from the date the costs were claimed, whichever is less. The retention period for records of equipment acquired in connection with the RLF shall be three (3) years from the date of disposition, replacement or transfer of the equipment.

B. Loan Records

Loan files and related documents and records shall be retained over the life of the loan and for a three (3) year period from the date of final disposition of the loan. The date of final disposition of the loan is defined as the date of: (1) full payment of the principal, interest, fees, penalties and other fees or costs associated with the loan; or (2) final settlement or write-off of any unpaid amounts associated with the loan.

C. General

If any litigation, claim, negotiation, audit or other action involving the RLF or its assets has commenced before the expiration of the three-year or five-year period, all administrative and program records pertaining to such matters shall be retained until completion of the action and the resolution of all issues which arise from it, or until the end of the regular three-year or five-year period, whichever is later.

The record retention periods described in this section are minimum periods and such prescription is not intended to limit any other record retention requirement of law or agreement. Any records retained for a period longer than so prescribed shall be available for inspection the same as records retained as prescribed. In any event, EDA will not question administrative costs claimed more than three (3) years old. However, if fraud is an issue, records must be retained until the issue is resolved.

ATTACHMENT 1—CIRCULARS, REGULATIONS & OTHER DOCUMENTS FOR AUDITS OF EDA RLF GRANTS

The OMB circulars and Federal regulations relevant to RLF grant recipients are listed in the table below for the different types of RLF grant recipients, i.e., governments, nonprofits or universities. Since these and the other documents listed on page ii are updated periodically, users must be careful to utilize the most current version available.

Circular or regulation	Government	Nonprofit	University
Administrative Requirements			
15 CFR Part 24	X		
OMB Circular A-110		X	X
Cost Principles			
OMB Circular A-21			X
OMB Circular A-87	X		
OMB Circular A-122		X	
Audit Requirements			
OMB Circular A-	X	X	X

⁵Securitization is a financing technique of securing the investment of new capital with the stream of income generated by one or more (usually a large group of) existing loans. For EDA's purposes, the term intentionally encompasses a wide variety of techniques to access investor capital by securing those investments with the value of an exist-

ing RLF economic development loan portfolio. This deliberately broad definition covers a number of actual and potential schemes to access investor capital that appear to deviate from the more traditional definition and yet provide flexible alternatives to RLF operators for raising additional funds.

The regulations for EDA Section 209 (RLF) grants are found in Title 13 of the Code of Federal Regulations (CFR), Part 308. The Department of Commerce regulations implementing the OMB audit requirements are found in 15 CFR, Part 29.

Other duties and responsibilities of grant recipients are defined in the Special Terms and the Standard Terms and Conditions of each EDA RLF grant. Each RLF should have an RLF Plan which is included as part of the Special Terms and Conditions. The RLF Plan summarizes the RLF's lending strategy, the loan standards and the operational procedures under which an RLF will be administered.

In addition, all RLF grant recipients are required to follow policies and procedures as prescribed by EDA. The most recent are included in the prevailing EDA RLF Administrative Manual and in the RLF Standard Terms and Conditions. Both documents apply to all EDA RLF grants.

Additional Guidance for State and Local Governmental Entities Audits

American Institute of Certified Public Accountants (AICPA) Audit and Accounting Guide, Audits of State and Local Governmental Units, issued May 1, 1996.
AICPA Audit and Accounting Guide, The Not-for-Profit Organizations, issued June 1, 1996.
Government Auditing Standards, issued by the Comptroller General of the United States, 1994 revision (Yellow Book).
OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations, issued June 30, 1997.
OMB Provisional Compliance Supplement for Single Audits (expected to be issued in late 1997).

Additional Guidance for Non-Profit Entities Audits

AICPA, Statement of Position 92-9, Audits of Not-for-Profit Organizations Receiving Federal Awards, issued December 1992. (Note: Because of significant changes to Government Auditing Standards and OMB Circular A-133, much of this is outdated. AICPA is developing a new SOP to supersede SOP 92-9).
AICPA Statement of Auditing Standards No. 74, Compliance Auditing Applicable to Governmental Entities and Other Recipients of Governmental Financial Assistance, issued February 1995.

ATTACHMENT 2—ECONOMIC DEVELOPMENT ADMINISTRATION SECTION 209 REVOLVING LOAN FUND GRANTS (CFDA 11.307)

I. PROGRAM OBJECTIVES

Revolving loan fund (RLF) grants for business development assistance are available

under Section 209 of the Public Works and Economic Development Act of 1965 (PWEDA). These grants are administered by the Economic Development Administration (EDA) to help communities adjust to sudden and severe economic dislocations and long-term economic deterioration. RLF grants provide capital to establish loan pools which finance business activities and stimulate economic development in accordance with local development strategies. RLFs typically provide financing that is not otherwise available. Loan repayments plus interest and other income replenish RLF capital to provide a revolving resource for additional loans.

II. PROGRAM PROCEDURES

RLF grants are made to EDA designated economic development districts established under Title IV of PWEDA, Indian tribes, states, cities or other political subdivisions, consortia of political subdivisions, Community Development Corporations defined in 42 U.S.C. 9802, nonprofit organizations determined to be representative of a redevelopment area, and certain specified governments. Priority consideration for RLF funding is given to those proposals which have the greatest potential to benefit areas experiencing or threatened with substantial economic distress.

III. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES

A. Types of Services Allowed or Unallowed

Compliance Requirement

Allowed Services: RLF grant and matching funds may be used only for purposes specified in the grant budget and grant agreement. Eligible uses normally include disbursements for RLF loans and the audit costs of RLF activities. Unlike grant and matching funds, RLF Income¹ may be used for RLF loans as well as for eligible RLF administrative expenses (see Section C. Earmarking below for additional details).

Suggested Audit Procedure

Review grant budget and grant agreement, and determine whether RLF funds were used for specified purposes.

¹ RLF Income includes the interest earned on loans, interest earned on accounts holding RLF funds not needed for immediate lending, loan fees received from borrowers, and other income generated from RLF activities.

B. Eligibility

Compliance Requirement

Eligibility: Eligibility for RLF assistance is based upon the following: (1) the activity financed being located in an eligible lending area (usually defined in the Special Terms and Conditions of the grant, as may be amended); and (2) the borrower being unable to obtain credit in the private capital market on terms and conditions which would permit the completion and/or successful operation of the project to be financed.

Ineligible Recipients: The RLF grant recipient cannot make a loan to itself, to related parties, or to entities that would violate the conflict of interest provisions of the grant agreement (see Section D.16. of the Standard Terms and Conditions).

Suggested Audit Procedure

Review the Special Terms and Conditions and any amendments thereto, and scan the current addresses of selected RLF borrowers to determine whether borrowers are located within the eligible lending area.

On selected borrowers, test for borrower's inability to obtain private credit by verifying the existence of a loan write-up² in the grant recipient's files. If there is a potential violation, check the RLF Administrative Manual, Section IV.B.3., for exceptions; this Section also discusses the loan write-up. No other tests are necessary.

Review the conflict of interest provisions in the Standard Terms and Conditions, review any procedures that the grant recipient may have to avoid conflicts of interest, scan loan documentation, and determine whether RLF loans were made to ineligible recipients as defined above.

C. Matching, Level of Effort, and/or Earmarking Requirements

Matching

Compliance Requirements

A matching share of nonfederal funds required is specified in the grant agreement. Matching funds must be loaned either before or proportionately with EDA grant funds. When loans are repaid, both the matching and the EDA funds must remain in the control of the grant recipient (or subrecipient) for the duration of the RLF.

²A loan write-up is a written record prepared by the RLF administrator which discusses, at a minimum, the need for providing RLF financing to a borrower. It may be supported by third party supplemental evidence as applicable and obtainable.

Suggested Audit Procedures

Determine through the grant documents and recipient accounting records that required levels of matching were met.

Determine that the funds used for matching have been retained in the RLF.

Level of Effort (Capital Utilization)

Compliance Requirements

During the revolving phase³ of an RLF grant, the grant recipient is expected to manage its RLF so at least 75 percent of the RLF's capital is in use. The size of the RLF may justify a variation from this standard percentage. Variations require EDA approval.

Suggested Audit Procedures

Determine that the percentage of outstanding loan dollars to total RLF capital complies with the prescribed usage level in the revolving phase. If the resultant percentage does not comply with the requirement, determine the duration or number of consecutive reporting periods of noncompliance. (See Section X., Capital Utilization Standard, of the EDA RLF Administrative Manual for details, and note that the reporting periods end on September 30 and March 31 of each year.)

Earmarking

Compliance Requirements

Pursuant to the prevailing EDA RLF Administrative Manual, RLF Income⁴ earned in a period may be used for lending or for RLF administrative expenses of the same period only. Any RLF Income remaining at the end of a period must be permanently added to the RLF's capital base to be used for lending. Any exceptions require EDA approval.

(Note: Prior to March 15, 1993, RLF Income was not required to be added to the RLF capital base at the end of a period. The accounting period is selected by the grant recipient and ends on either its fiscal year end or the Federal fiscal year end. Repayments of loan principal may be used only for re-lending.)

Suggested Audit Procedures

Verify that any RLF Income earned within the period has been used for such period's RLF administrative expenses, for loans, or that any unexpended RLF Income earned in the period has been added to the RLF capital base.

³The revolving phase begins after all available grant and matching funds have been initially disbursed.

⁴Defined in Footnote 1, Page ii.

D. Special Reporting Requirements

Compliance Requirements

Grant recipients electing to use RLF Income to cover all or part of an RLF's administrative expense must annually complete an "RLF Income and Expense Statement." (If the grant recipient uses more than fifty percent or more than \$100,000 of a period's RLF Income for RLF administrative expenses, the statement is submitted to EDA within 90 days of the period ending date.)

Suggested Audit Procedures

Review the procedures for preparing the report (See Section VII. of EDA RLF Administrative Manual) and evaluate for adequacy.

E. Special Tests and Provisions

Compliance Requirements

RLF grant recipients are expected to follow lending practices generally accepted as prudent for public lending programs.

Suggested Audit Procedures

Review the grant recipient's RLF Plan for loan disbursement and collection procedures. Determine whether these procedures are being followed.

During the Disbursement Phase⁵ of an RLF grant, a grant recipient must demonstrate there is sufficient RLF loan activity to draw grant funds within the approved period allotted. This usually is in accordance with the following schedule: 50% of grant and matching funds disbursed within 18 months of the grant award, 80% within two (2) years, and 100% within three (3) years. Any time extensions require EDA's approval. By law, grant funds remain available for disbursement by EDA only until September 30 of the fifth year after the fiscal year of the grant award.

F. Preservation of Government's Interest in Assets

Compliance Requirements

In instances where RLF grant recipients elect to Securitize their loan portfolios, EDA's prior written consent must be obtained and the value of the Federal Government's reversionary interest in assets retained.

Suggested Audit Procedures

Review grant recipients records where Securitization may have occurred and determine whether grantee obtained EDA's written consent as required.

⁵The Disbursement Phase is defined as the approved time period for drawing all EDA grant funds.

PARTS 309–313 [RESERVED]

PART 314—PROPERTY

Subpart A—In General

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- 314.3 Use of property.
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Subpart D—Release of EDA's Property Interest

- 314.11 Procedures for release of EDA's property interest.

AUTHORITY: 42 U.S.C. 3211; 19 U.S.C. 2341–2355; 42 U.S.C. 6701; 42 U.S.C. 184; Department of Commerce Organization Order 10–4.

SOURCE: 64 FR 5476, Feb. 3, 1999, unless otherwise noted.

Subpart A—In General

§314.1 Federal interest, applicability.

(a) Property that is acquired or improved with EDA grant assistance shall be held in trust by the recipient for the benefit of the purposes of the project under which the property was acquired or improved. Limited exceptions to this requirement are listed in §314.7(c).

(b) During the estimated useful life of the project, EDA retains an undivided equitable reversionary interest in property acquired or improved with EDA grant assistance, except for the exceptions listed in §314.7(c).

(c) EDA may approve the substitution of an eligible entity for a recipient. The original recipient remains responsible for the period it was the recipient, and the successor recipient holds the project property with the responsibilities of an original recipient under the award.

§ 314.2 Definitions.

As used in this part 314 of this chapter:

Dispose includes sell, lease, abandon, or use for a purpose or purposes not authorized under the grant award or this part.

Estimated useful life means that period of years, determined by EDA as the expected lifespan of the project.

Owner includes fee owner, transferee, lessee, or optionee of real property upon which project facilities or improvements are or will be located, or real property improved under a project which has as its purpose that the property be sold or leased.

Personal Property means all property other than real property.

Project means the activity and property acquired or improved for which a grant is awarded. When property is used in other programs as provided in § 314.3(b), "project" includes such programs.

Property includes all forms of property, real, personal (tangible and intangible), and mixed.

Real property means any land, improved land, structures, appurtenances thereto, or other improvements, excluding movable machinery and equipment. Improved land also includes land which is improved by the construction of such project facilities as roads, sewers, and water lines which are not situated directly on the land but which contribute to the value of such land as a specific part of the project purpose.

Recipient includes any recipient of grant assistance under the Public Works and Economic Development Act of 1965, as amended, prior to or as amended by Public Law 105-393, or under Title II, Chapters 3 and 5 of the Trade Act of 1974, Title I of the Public Works Employment Act of 1976, the Public Works Employment Act of 1977, or the Community Emergency Drought Relief Act of 1977, and any EDA-approved successor to such recipient.

§ 314.3 Use of property.

(a) The recipient or owner must use any property acquired or improved in whole or in part with grant assistance only for the authorized purpose of the project and such property must not be leased, sold, disposed of or encumbered

without the written authorization of EDA.

(b) However, in the event that EDA and the recipient determine that property acquired or improved in whole or in part with grant assistance is no longer needed for the original grant purpose, it may be used in other Federal grant programs, or programs that have purposes consistent with those authorized for support by EDA, but only if EDA approves such use.

(c) When the authorized purpose of the EDA grant is to develop real property to be leased or sold, as determined by EDA, such sale or lease is permitted provided it is for adequate consideration and the sale is consistent with the authorized purpose of the grant and with applicable EDA requirements concerning, but not limited to, non-discrimination and environmental compliance. The term "adequate consideration" means consideration that is fair and reasonable under the circumstances of the sale or lease, and may include money, services, property exchanges, contractual commitments, or acts of forbearance.

(d) When acquiring replacement personal property of equal or greater value, the recipient may, with EDA's approval, trade-in the property originally acquired or sell the original property and use the proceeds in the acquisition of the replacement property, provided that the replacement property shall be used for the project and be subject to the same requirements as the original property. In extraordinary and compelling circumstances, EDA may allow replacement of real property, with the approval of the Assistant Secretary.

[64 FR 5476, Feb. 3, 1999, as amended at 64 FR 69879, Dec. 14, 1999]

§ 314.4 Unauthorized use.

(a) Except as provided in §§ 314.3(b), (c) or (d), whenever, during the expected useful life of the project, any property acquired or improved in whole or in part with grant assistance is disposed of, or no longer used for the authorized purpose of the project, the Federal Government must be compensated by the recipient for the Federal share of the value of the property;

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provided that for equipment and supplies, the standards of the Uniform Administrative Requirements for Grants at 15 CFR parts 14 and 24 or any supplements or successors thereto, as applicable, shall apply.

(b) If property is disposed of or encumbered without EDA approval, EDA may assert its interest in the property to recover the Federal share of the value of the property for the Federal Government. To that end, EDA may take such actions as are provided in connection with loans and loan guarantees, in § 316.5(c) of this chapter. EDA may pursue its rights under both paragraphs (a) and (b) of this section to recover the Federal share, plus costs and interest.

[64 FR 5476, Feb. 3, 1999, as amended at 64 FR 69879, Dec. 14, 1999]

§ 314.5 Federal share.

(a) For purposes of this part, the Federal share of the value of property is that percentage of the current fair market value of the property attributable to the EDA participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, incurred to put the property into condition for sale). The Federal share excludes that value of the property attributable to acquisition or improvements before or after EDA's participation in the project and not included in project costs.

(b) Where the recipient's interest in property is a leasehold for a term of years less than the depreciable remaining life of the property, that factor will be considered in determining the percentage of the Federal share.

(c) If property is transferred from the recipient to another eligible entity, as provided in § 314.1(c), the Federal Government must be compensated the Federal share of any money or money equivalent paid by or on behalf of the successor recipient to or for the benefit of the original recipient, provided that EDA may first permit the recovery by the original recipient of an amount not exceeding its investment in the project nor exceeding that percentage of the value of the property that is not attributable to the EDA participation in the project.

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(d) When the Federal Government is fully compensated for the Federal share of the value of property acquired or improved in whole or in part with grant assistance, EDA has no further interest in the ownership, use, or disposition of the property.

§ 314.6 Encumbrances.

(a) Except as provided in § 314.6(c), recipient-owned property acquired or improved in whole or in part with grant assistance may not be used to secure a mortgage or deed of trust or otherwise be used as collateral or encumbered except to secure a grant or loan made by a State or Federal agency or other public body participating in the same project. This provision does not prevent projects from being developed on previously encumbered property, if the requirements of § 314.7(b) are met.

(b) Encumbering project property other than as permitted in this section is an unauthorized use of the property requiring compensation to the Federal Government as provided in §§ 314.4 and 314.5.

(c) EDA may waive the provisions of § 314.6(a) for good cause when EDA determines all of the following:

(1) All proceeds from the grant/loan to be secured by the encumbrance on the property shall be available only to the recipient, and all proceeds from such secured grant/loan shall be used only on the project for which the EDA grant was awarded or on related activities of which the project is an essential part;

(2) The grantor/lender would not provide funds without the security of a lien on the project property; and

(3) There is a reasonable expectation that the borrower/recipient will not default on its obligation.

(d) EDA may waive the provisions of § 314.6(a) as to an encumbrance on property which is acquired and/or improved by an EDA grant when EDA determines that the encumbrance arises solely from the requirements of a pre-existing water or sewer facility or other utility encumbrance which by its terms extends to additional property connected to such facilities.

Subpart B—Real Property**§ 314.7 Title.**

(a) The recipient must hold title to the real property required for a project, except in limited cases as provided in paragraph 314.7(c) of this section. Except in those limited cases, the recipient must furnish evidence, satisfactory in form and substance to EDA, that title to real property required for a project (other than property of the United States) is vested in the recipient, and that such easements, rights-of-way, State permits, or long-term leases as are required for the project have been or will be obtained by the recipient within an acceptable time as determined by EDA.

(b)(1) The recipient must disclose to EDA all:

- (i) Liens,
- (ii) Mortgages,
- (iii) Other encumbrances,
- (iv) Reservations,
- (v) Reversionary interests, or
- (vi) Other restrictions on title or the recipient's interest in the property.

(2) No such encumbrance or restriction will be acceptable if, as determined by EDA, the encumbrance or restriction will interfere with the construction, use, operation or maintenance of the project during its estimated useful life.

(c) EDA may determine that a long-term leasehold interest for a period not less than the estimated useful life of the project, or an agreement for the recipient to purchase the property, will be acceptable, but only if fee title is not obtainable and the lease or purchase agreement provisions adequately safeguard the Federal Government's interest in the project. Also, EDA may permit the following exceptions to the requirement that the recipient hold title to the real property required for a project.

(1) When a project includes construction within a railroad's right-of-way or over a railroad crossing, it may be acceptable for the work to be completed by the railroad and for the railroad to continue to own, operate and maintain that portion of the project, if required by the railroad, and provided that this is a minor but essential component of the project.

(2) When a project includes construction on a State-owned or local government-owned highway, it may be acceptable for the State or local government to own, operate and maintain that portion of the project, if required by the State or local government, provided that this is a minor but essential component of the project, the construction is completed in accordance with EDA requirements, and the State or local government provides assurances to EDA:

(i) That the State or local government will operate and maintain the improvements for the useful life of the project as determined by EDA;

(ii) That the State or local government will not sell the improvements for the useful life of the project, as determined by EDA; and

(iii) That the use of the property will be consistent with the authorized purpose of the project.

(3) When the authorized purpose of the project is to construct facilities to serve industrial or commercial parks or sites owned by the recipient for sale or lease to private parties, such sale or lease is permitted so long as EDA requirements continue to be met. EDA may require evidence that the recipient has title to the park or site prior to such sale or lease.

(4) When the authorized purpose of the project is to construct facilities to serve privately owned industrial or commercial parks or sites for sale or lease, such ownership, sale or lease is permitted so long as EDA requirements continue to be met. EDA may require evidence that the private party has title to the park or site prior to such sale or lease, and may condition the award of project assistance upon assurances by the private party relating to the sale or lease that EDA determines are necessary to assure consistency with the project purposes.

§ 314.8 Recorded statement.

(a) For all projects involving the acquisition, construction or improvement of a building, as determined by EDA, the recipient shall execute a lien, covenant or other statement of EDA's interest in the property acquired or improved in whole or in part with the funds made available under the award.

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The statement shall specify in years the estimated useful life of the project and shall include, but not be limited to disposition, encumbrance, and compensation of Federal share requirements of this part 314. The statement shall be satisfactory in form and substance to EDA.

(b) The statement of EDA's interest must be perfected and placed of record in the real property records of the jurisdiction in which the property is located, all in accordance with local law.

(c) Facilities in which the EDA investment is only a small part of a large project, as determined by EDA, may be exempted from the requirements of this section.

Subpart C—Personal Property

§ 314.9 Recorded statement—Title.

For all projects which EDA determines involve the acquisition or improvement of significant items of tangible personal property, including but not limited to ships, machinery, equipment, removable fixtures or structural components of buildings, the recipient shall execute a security interest or other statement of EDA's interest in the property, acceptable in form and substance to EDA, which statement must be perfected and placed of record in accordance with local law, with continuances refiled as appropriate. Whether or not a statement is required by EDA to be recorded, the recipient must hold title to the personal property acquired or improved as part of the project, except as otherwise provided in this part.

§ 314.10 Revolving loan funds.

(a) With EDA's consent, recipients holding revolving loan fund (RLF) property (including but not limited to money, notes, and security interests) may sell such property or encumber such property as part of a securitization of the RLF portfolio. The net transaction proceeds must be used for additional loans as part of the RLF project;

(b) When a recipient determines that it is no longer necessary or desirable to operate an RLF, the RLF may be terminated; provided that, unless otherwise stated in the award, the recipient

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must compensate the Federal Government for the Federal share of the value of the RLF property. The Federal share is that percentage of the capitalized RLF contributed by EDA applied to all RLF property, including the present value of all outstanding loans. However, with EDA's prior approval, upon termination the recipient may use for other economic development purposes that portion of such RLF property that EDA determines is attributable to the payment of interest.

Subpart D—Release of EDA's Property Interest

§ 314.11 Procedures for release of EDA's property interest.

(a) Before the expiration of the estimated useful life of the grant project, EDA may release, in whole or in part, any real property interest, or tangible personal property interest, in connection with a grant after the date that is 20 years after the date on which the grant was awarded. (The term "tangible personal property" excludes debt instruments, currency, and accounts in financial institutions.) Except as provided in paragraph (b) of this section, such release is not automatic; it requires EDA's approval, which will not be withheld except for good cause. The release may be unconditional, or may be conditioned upon some activity of the recipient intended to be pursued as a consequence of the release.

(b) EDA hereby releases all of its real and tangible personal property interests in projects awarded under the Public Works Employment Act of 1976 (Pub. L. 94-369) and under that act as amended by the Public Works Employment Act of 1977 (Pub. L. 95-28).

(c)(1) Notwithstanding §§ 314.11(a) and (b), in no event, either before or after the release of EDA's interest, may project property be used:

(i) In violation of the nondiscrimination requirements of the project award, or

(ii) For religious purposes prohibited by the holding of the U.S. Supreme Court in *Tilton v. Richardson*, 403 U.S. 672 (1971).

(2) Such use voids the release, and is an unauthorized use of the property, as provided in § 314.4.

PART 315—CERTIFICATION AND ADJUSTMENT ASSISTANCE FOR FIRMS

Subpart A—General Provisions

Sec.

- 315.1 Purpose and scope.
- 315.2 Definitions.
- 315.3 Confidential business information.
- 315.4 Eligible applicants.
- 315.5 Selection process.
- 315.6 Evaluation criteria.
- 315.7 Award requirements.

Subpart B—Trade Adjustment Assistance Centers

- 315.8 Purpose and scope.

Subpart C—Certification of Firms

- 315.9 Certification requirements.
- 315.10 Processing petitions for certification.
- 315.11 Hearings, appeals and final determinations.
- 315.12 Termination of certification and procedure.
- 315.13 Loss of certification benefits.

Subpart D—Assistance to Industries

- 315.14 Assistance to firms in import-impacted industries.

AUTHORITY: 42 U.S.C. 3211; 19 U.S.C. 2391, *et seq.*; 42 U.S.C. 5141; E.O. 12372; Department of Commerce Organization Order 10-4.

SOURCE: 64 FR 5478, Feb. 3, 1999, unless otherwise noted.

Subpart A—General Provisions

§ 315.1 Purpose and scope.

The regulations in this part implement certain changes to responsibilities of the Secretary of Commerce under Chapter 3 of Title II of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*) (Trade Act), concerning adjustment assistance for firms. The statutory authority and responsibilities of the Secretary of Commerce relating to adjustment assistance are delegated to EDA. EDA has the duties of certifying firms as eligible to apply for adjustment assistance, providing technical adjustment assistance to eligible recipients, and providing assistance to organizations representing trade injured industries.

§ 315.2 Definitions.

As used in this part 315 of this chapter:

Adjustment assistance is technical assistance provided to firms or industries under Chapter 3 of Title II of the Trade Act.

Adjustment proposal means a certified firm's plan for improving its economic situation.

Certified firm means a firm which has been determined by EDA to be eligible to apply for adjustment assistance.

Confidential business information means information submitted to EDA or TAACs by firms that concerns or relates to trade secrets for commercial or financial purposes which is exempt from public disclosure under 5 U.S.C. 552(b)(4), 5 U.S.C. 552b(c)(4) and 15 CFR part 4.

Decreased absolutely means a firm's sales or production has declined:

- (1) Irrespective of industry or market fluctuations; and
- (2) Relative only to the previous performance of the firm.

Directly competitive means:

- (1) Articles which are substantially equivalent for commercial purposes, i.e., are adapted to the same function or use and are essentially interchangeable; and
- (2) Oil or natural gas (exploration, drilling or otherwise produced).

Firm means an individual proprietorship, partnership, joint venture, association, corporation (including a development corporation), business trust, cooperative, trustee in bankruptcy or receiver under court decree and including fishing, agricultural entities and those which explore, drill or otherwise produce oil or natural gas. When a firm owns or controls other firms as described below, for purposes of receiving benefits under this part, the firm and such other firms may be considered a single firm when they produce like or directly competitive articles or are exerting essential economic control over one or more production facilities. Such other firms include:

- (1) Predecessor;
- (2) Successor;
- (3) Affiliate; or
- (4) Subsidiary.

A group of workers threatened with total or partial separation means there is

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reasonable evidence that such total or partial separation is imminent.

Like articles means articles which are substantially identical in their intrinsic characteristics.

Partial separation means either:

(1) A reduction in an employee's work hours to 80 percent or less of the employee's average weekly hours during the year of such reductions as compared to the preceding year; or

(2) A reduction in the employee's weekly wage to 80 percent or less of his/her average weekly wage during the year of such reduction as compared to the preceding year.

Person means individual, organization or group.

The record means:

(1) A petition for certification of eligibility to qualify for adjustment assistance;

(2) Any supporting information submitted by the petitioner;

(3) Report of the EDA investigation in regard to the petition; and

(4) Any information developed during the investigation or in connection with any public hearing held on the petition.

Recipient means a firm, Trade Adjustment Assistance Center or other party receiving adjustment assistance or through which adjustment assistance is provided under the Trade Act.

A significant number or proportion of workers means 5 percent of the firm's work force or 50 workers, whichever is less. An individual farmer is considered a significant number or proportion of workers.

Substantial interest means a direct, material, economic interest in the certification or noncertification of the petitioner.

Technical Assistance means assistance provided to firms or industries under Chapter 3 of Title II of the Trade Act.

A totally separated worker means an employee who has been laid off or whose employment has been terminated by his/her employer for lack of work.

§ 315.3 Confidential business information.

EDA will follow the procedures set forth in 15 CFR § 4.7, and submitters

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should so designate any information they believe confidential.

§ 315.4 Eligible applicants.

(a) Trade Adjustment Assistance Centers (TAACs) are eligible applicants. A TAAC can be:

(1) A university affiliate;

(2) State or local government affiliate;

(3) Non-profit organization.

(b) Firms;

(c) Organizations assisting or representing industries in which a substantial number of firms or workers have been certified as eligible to apply for adjustment assistance under sections 223 or 251 of the Trade Act including the following:

(1) Existing agencies;

(2) Private individuals;

(3) Firms;

(4) Universities;

(5) Institutions;

(6) Associations;

(7) Unions; or

(8) Other non-profit industry organizations.

§ 315.5 Selection process.

(a) TAACs are selected in accordance with the following:

(1) Currently funded TAACs are invited by EDA to submit either new or amended applications, provided they have performed in a satisfactory manner and complied with previous and/or current conditions in their cooperative agreements with EDA and contingent upon availability of funds. Such TAACs shall submit an application on a form approved by OMB, as well as a proposed budget, narrative scope of work, and such other information as requested by EDA. Acceptance of an application or amended application for a cooperative agreement does not assure funding by EDA; and

(2) New TAACs will be invited to submit proposals, and if they are acceptable, EDA will invite an application on a form approved by OMB. An application will be accompanied by a narrative scope of work, proposed budget and such other information as requested by EDA. Acceptance of an application does not assure funding by EDA.

(b) Firms are selected in accordance with the following:

(1) Firms may apply for certification generally through a TAAC by filling out a petition for certification. The TAAC will provide technical assistance to firms wishing to fill out such petitions;

(2) Once firms are certified in accordance with the procedures described in §§ 315.9 and 315.10, an adjustment proposal is usually prepared with technical assistance from a party independent of the firm, usually the TAAC, and submitted to EDA;

(3) Certified firms which have submitted acceptable adjustment proposals within the time limits described in § 315.13 below, may begin implementation of such proposal, generally through the TAAC and often with Technical Assistance from the TAAC, by submitting a request to the TAAC to provide assistance in implementing an accepted adjustment proposal; and

(4) EDA determines whether or not to provide assistance for adjustment proposals based upon § 315.6(c)(2).

(c) Organizations representing trade injured industries must meet with an EDA representative to discuss the industry problems, opportunities and assistance needs, and if invited by EDA may then submit an application as approved by OMB, as well as a scope of work and proposed budget.

§ 315.6 Evaluation criteria.

(a) Currently funded TAACs are generally evaluated based on the following:

(1) How well they have performed under cooperative agreements with EDA and if they are in compliance with the terms and conditions of such cooperative agreements;

(2) Proposed scope of work, budget and application or amended application; and

(3) The availability of funds.

(b) New TAACs are generally evaluated on the following:

(1) Demonstrates competence in administering business assistance programs;

(2) Background and experience of staff;

(3) Proposed scope of work, budget and application; and

(4) The availability of funding.

(c) Firms are generally evaluated based on the following:

(1) For certification, firms' petitions are selected strictly on the basis of conformance with requirements set forth in § 315.9 below;

(2) An adjustment proposal is evaluated on the basis of the following:

(i) The proposal must be submitted to EDA within 2 years after the date of the certification of the firm; and

(ii) The adjustment proposal must include a description of any technical assistance requested to implement such proposal including financial and other supporting documentation as EDA determines is necessary, based upon either:

(A) An analysis of the firm's problems, strengths and weaknesses and an assessment of its prospects for recovery; or

(B) If EDA so determines, an acceptable adjustment proposal can be prepared on the basis of other available information.

(iii) The adjustment proposal must be evaluated to determine that it:

(A) Is reasonably calculated to contribute materially to the economic adjustment of the firm, i.e., that such proposal will be a constructive aid to the firm in establishing a competitive position in the same or a different industry;

(B) Gives adequate consideration to the interests of a sufficient number of separated workers of the firm, by providing for example that the firm will:

(1) Give a rehiring preference to such workers;

(2) Make efforts to find new work for a number of such workers; and

(3) Assist such workers in obtaining benefits under available programs.

(C) Demonstrates that the firm will make all reasonable efforts to use its own resources for economic development, though under certain circumstances, resources of related firms or major stockholders will also be considered.

(d) Organizations representing trade injured industries must demonstrate that the industry is injured by increased imports and that the activities to be funded will yield some short-term

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actions that the industry itself (and individual firms) can and will take toward the restoration of the industry's international competitiveness.

(1) The emphasis is on practical results that can be implemented in the near term, and long-term research and development activities are given low priority.

(2) It is also expected that the industry will continue activities on its own without the need for continued Federal assistance.

§ 315.7 Award requirements.

(a) Award periods are as follows:

(1) TAACs are generally funded for 12 months;

(2) Firms are generally provided assistance over a 2-year period; and

(3) Organizations representing trade injured industries are generally funded for 12 months.

(b) Matching requirements are as follows:

(1) There are no matching requirements for certification assistance provided by the TAACs to firms or for administrative expenses for the TAACs;

(2) All adjustment proposals and implementation assistance must include not less than 25% nonfederal match, provided to the extent practicable, by firms being assisted; and

(3) Contributions of at least 50% of the total project cash cost, in addition to appropriate in kind contributions, are expected from organizations representing trade injured industries.

Subpart B—Trade Adjustment Assistance Centers

§ 315.8 Purpose and scope.

(a) Trade Adjustment Assistance Centers (TAACs) are available to assist firms in all fifty states, the District of Columbia and the Commonwealth of Puerto Rico in obtaining adjustment assistance. TAACs provide technical assistance in accordance with this subpart either through their own staffs or by arrangements with outside consultants. Information concerning TAACs serving particular areas can be obtained from EDA. See the annual FY NOFA for the appropriate point of contact and address.

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(b) Prior to submitting a request for technical assistance to EDA, a firm should determine the extent to which the required technical assistance can be provided through a TAAC. EDA will provide technical assistance through TAACs whenever EDA determines that such assistance can be provided most effectively in this manner. Requests for technical assistance will normally be made through TAACs.

(c) TAACs generally provide technical assistance to a firm by providing the following:

(1) Assistance to a firm in preparing its petition for certification;

(2) Assistance to a certified firm in diagnosing its strengths and weaknesses and developing an adjustment proposal for the firm; and

(3) Assistance to a certified firm in the implementation of the adjustment proposal for the firm.

Subpart C—Certification of Firms

§ 315.9 Certification requirements.

A firm will be certified eligible to apply for adjustment assistance based upon the petition for certification if EDA determines, under section 251(c) of the Trade Act, that:

(a) A significant number or proportion of workers in such firm have become totally or partially separated, or are threatened to become totally or partially separated;

(b) Either sales or production, or both of the firm have decreased absolutely; or sales or production, or both of any article that accounted for not less than 25 percent of the total production or sales of the firm during the 12-month period preceding the most recent 12-month period for which data are available have decreased absolutely; and

(c) Increases of imports (absolute or relative to domestic production) of articles like or directly competitive with articles produced by such firm contributed importantly to such total or partial separation or threat thereof, and to such decline in sales or production; provided that imports will not be considered to have contributed importantly if other factors were so dominant, acting singly or in combination, that the worker separation or threat

thereof, or decline in sales or production would have been essentially the same irrespective of the influence of imports.

§ 315.10 Processing petitions for certification.

(a) Firms are encouraged to consult with a TAAC or EDA for guidance and assistance in the preparation of their petitions for certification.

(b) A firm seeking certification shall complete a petition (OMB Control Number 0610-0091) in the form prescribed by EDA with the following information about such firm:

(1) Identification and description of the firm, including legal form of organization, economic history, major ownership interests, officers, directors, management, parent company, subsidiaries or affiliates, and production and sales facilities;

(2) Description of goods and services produced and sold;

(3) Description of imported articles like or directly competitive with those produced;

(4) Data on its sales, production and employment for the two most recent years;

(5) Copies of its audited financial statements, or if not available, unaudited financial statements and Federal income tax returns for the two most recent years;

(6) Copies of unemployment insurance reports for the two most recent years;

(7) Information concerning its major customers and their purchases; and

(8) Such other information as EDA may consider material.

(c) EDA shall determine whether the petition has been properly prepared and can be accepted. Immediately thereafter, EDA shall notify the petitioner that the petition has been accepted or advise the petitioner that the petition has not been accepted, but may be resubmitted at any time without prejudice when the specified deficiencies have been corrected and the resubmission will be treated as a new petition.

(d) A notice of acceptance of a petition shall be published in the FEDERAL REGISTER.

(e) An investigation shall be initiated by EDA to determine whether the petitioner meets requirements set forth in section 251(c) of the Trade Act and § 315.9 above. The investigation can be terminated at any time for failure to meet such requirements. A report of this investigation shall become part of the record upon which a determination of the petitioner's eligibility to apply for adjustment assistance shall be made.

(f) A petitioner may withdraw a petition for certification if a request for withdrawal is received by EDA before a certification determination or denial is made. Such firm may submit a new petition at any time thereafter in accordance with the requirements of this section and § 315.9.

(g) Following acceptance, EDA shall decide what action to take on petitions for certification as follows:

(1) Make a determination based on the record as soon as possible after all material has been submitted. In no event may the period exceed 60 days from the date on which the petition was accepted; and

(2) Either certify the petitioner eligible to apply for adjustment assistance or deny the petition, and in either event EDA shall promptly give notice of the action in writing to the petitioner. A notice to the petitioner or any parties requesting notice as specified in § 315.10(d) of a denial of a petition shall specify the reasons upon which the denial is based. If a petition is denied, the petitioner shall not be entitled to resubmit its petition within one year from the date of the denial. At the time of the denial of a petition EDA may waive the 1-year limitation for good cause.

§ 315.11 Hearings, appeals and final determinations.

(a) Any petitioner may appeal to EDA from a denial of certification provided that the appeal is received by EDA in writing by personal delivery or by registered mail within 60 days from the date of notice of denial under § 315.10(g). The appeal shall state the grounds on which the appeal is based, including a concise statement of the supporting facts and law. The decision of EDA on the appeal shall be the final

determination within the Department of Commerce. In the absence of an appeal by the petitioner under this paragraph, such final determination shall be determined under §315.10(g).

(b) A firm, its representative or any other interested domestic party aggrieved by a final determination under paragraph (a) of this section may, within 60 days after notice of such determination, begin a civil action in the United States Court of International Trade for review of such determination in accordance with section 284 of the Trade Act (19 U.S.C. 2395).

(c) EDA will hold a public hearing on an accepted petition not later than 10 days after the date of publication of the Notice of Acceptance in the FEDERAL REGISTER if requested by either the petitioner or any other person found by EDA to have a substantial interest in the proceedings, under procedures, as follows:

(1) The petitioner and other interested persons shall have an opportunity to be present, to produce evidence, and to be heard;

(2) A request for public hearing must be delivered by hand or by registered mail to EDA. A request by a person other than the petitioner shall contain:

(i) The name, address, and telephone number of the person requesting the hearing; and

(ii) A complete statement of the relationship of the person requesting the hearing to the petitioner and the subject matter of the petition, and a statement of the nature of its interest in the proceedings.

(3) If EDA determines that the requesting party does not have a substantial interest in the proceedings, a written notice of denial shall be sent to the requesting party. The notice shall specify the reasons for the denial;

(4) EDA shall publish a notice of a public hearing in the FEDERAL REGISTER, containing the subject matter, name of petitioner, and date, time and place of hearing;

(5) EDA shall appoint the presiding officer of the hearing who shall determine all procedural questions;

(6) Procedures for requests to appear are as follows:

(i) Within 5 days after publication of the Notice of Public Hearing in the

FEDERAL REGISTER, each party wishing to be heard must file a request to appear with EDA. Such request may be filed by:

(A) The party requesting such hearing;

(B) Any other party with substantial interest; or

(C) Any other party demonstrating to the satisfaction of the presiding officer that it should be allowed to be heard.

(ii) The party filing the request shall submit the names of the witnesses and a summary of the evidence it wishes to present; and

(iii) Such requests to appear may be approved as deemed appropriate by the presiding officer.

(7) Witnesses will testify in the order and for the time designated by the presiding officer, except that the petitioner shall have the opportunity to make its presentation first. After testifying, a witness may be questioned by the presiding officer or his/her designee. The presiding officer may allow any person who has been granted permission to appear to question the witnesses for the purpose of assisting him/her in obtaining relevant and material facts on the subject matter of the hearing;

(8) The presiding officer may exclude evidence which s/he deems improper or irrelevant. Formal rules of evidence shall not be applicable. Documentary material must be of a size consistent with ease of handling, transportation, and filing. Large exhibits may be used during the hearing, but copies of such exhibits must be provided in reduced size for submission as evidence. Two copies of all documentary evidence must be furnished to the presiding officer during the hearing;

(9) Briefs may be presented to the presiding officer by parties who have entered an appearance. Three copies of such briefs shall be filed with the presiding officer within 10 days of the completion of the hearing; and

(10) Procedures for transcripts are as follows:

(i) All hearings will be transcribed. Persons interested in transcripts of the hearings may inspect them at the U.S.

Department of Commerce in Washington, D.C., or purchase copies as provided in 15 CFR part 4, Public Information; and

(ii) Confidential business information as determined by EDA shall not be a part of the transcripts. Any confidential business information may be submitted directly to the presiding officer prior to the hearing. Such information shall be labeled Confidential Business Information. For the purpose of the public record, a brief description of the nature of the information shall be submitted to the presiding officer during the hearing.

§315.12 Termination of certification and procedure.

(a) Whenever EDA determines that a certified firm no longer requires adjustment assistance or for other good cause, EDA will terminate the certification and promptly publish notice of such termination in the FEDERAL REGISTER. The termination will take effect on the date specified in the Notice.

(b) EDA shall immediately notify the petitioner and shall state the reasons for such termination.

§315.13 Loss of certification benefits.

A firm may fail to obtain benefits of certification, regardless of whether its certification is terminated for any of the following reasons:

(a) Failure to submit an acceptable adjustment proposal within 2 years after date of certification. While approval of an adjustment proposal may occur after the expiration of such 2-year period, an acceptable adjustment proposal must be submitted before such expiration;

(b) Failure to submit documentation necessary to start implementation or modify its request for adjustment assistance consistent with its adjustment proposal within 6 months after approval of the adjustment proposal and 2 years have elapsed since the date of certification. If the firm anticipates that a longer period will be required to submit documentation, such longer period should be indicated in its adjustment proposal. If the firm becomes unable to submit its documentation within the allowed time, it should notify EDA in writing of the reasons for the

delay and submit a new schedule. EDA has the discretion to accept or refuse a new schedule;

(c) If the firm's request for adjustment assistance has been denied, the time period allowed for the submission of any documentation in support of such request has expired, and 2 years have elapsed since the date of certification; or

(d) Failure to diligently pursue an approved adjustment proposal, and 2 years have elapsed since the date of certification.

Subpart D—Assistance to Industries

§315.14 Assistance to firms in import-impacted industries.

(a) Whenever the International Trade Commission makes an affirmative finding under section 202(B) of the Trade Act that increased imports are a substantial cause of serious injury or threat thereof with respect to an industry, EDA shall provide to the firms in such industry, assistance in the preparation and processing of petitions and applications for benefits under programs which may facilitate the orderly adjustment to import competition of such firms.

(b) EDA may provide technical assistance, on such terms and conditions as EDA deems appropriate for the establishment of industry wide programs for new product development, new process development, export development or other uses consistent with the purposes of this part.

(c) Expenditures for technical assistance under this section may be up to \$10,000,000 annually per industry and shall be made under such terms and conditions as EDA deems appropriate.

PART 316—GENERAL REQUIREMENTS FOR FINANCIAL ASSISTANCE

Sec.

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- 316.19 Project administration by District organization.

AUTHORITY: 42 U.S.C. 3211; 19 U.S.C. 2391, *et seq.*; Department of Commerce Organization Order 10–4.

SOURCE: 64 FR 5482, Feb. 3, 1999, unless otherwise noted.

§ 316.1 Environment.

(a) The purpose of this section is to ensure proper environmental review of EDA's actions under PWEDA and the Trade Act and to comply with the Federal environmental statutes and regulations in making a determination that balances economic development and environmental enhancement and mitigates adverse environmental impacts to the extent possible.

(b) Environmental assessments of EDA actions will be conducted in accordance with the statutes, regulations, and Executive Orders listed below. This list will be supplemented and modified, as applicable, in EDA's annual FY NOFA.

(1) Requirements under the National Environmental Policy Act of 1969 (NEPA), Pub. L. 91–190, as amended, 42 U.S.C. 4321 *et seq.* as implemented under 40 CFR parts 1500 *et seq.* including the following:

(i) The implementing regulations of NEPA require EDA to provide public notice of the availability of project specific environmental documents such as environmental impact statements, environmental assessments, findings of no significant impact, records of decision etc., to the affected public as specified in 40 CFR 1506.6(b); and

(ii) Depending on the project location, environmental information con-

cerning specific projects can be obtained from the Environmental Officer in the appropriate Washington, D.C. or regional office listed in the NOFA;

(2) Clean Air Act, Pub. L. 88–206 as amended, 42 U.S.C. 7401 *et seq.*;

(3) Clean Water Act (Federal Water Pollution Control Act), c. 758, 62 Stat. 1152 as amended, 33 U.S.C. 1251 *et seq.*;

(4) Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), Pub. L. 96–510, as amended, 42 U.S.C. 9601 *et seq.* and the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99–499, as amended;

(5) Floodplain Management Executive Order 11988 (May 24, 1977);

(6) Protection of Wetlands Executive Order 11990 (May 24, 1977);

(7) Resource Conservation and Recovery Act of 1976, Pub. L. 94–580 as amended, 42 U.S.C. 6901 *et seq.*;

(8) Historical and Archeological Data Preservation Act, Pub. L. 86–523, as amended, 16 U.S.C. § 469a–1 *et seq.*;

(9) National Historic Preservation Act of 1966, Pub. L. 89–665, as amended, 16 U.S.C. § 470 *et seq.*;

(10) Endangered Species Act of 1973, Pub. L. 93–205, as amended, 16 U.S.C. § 1531 *et seq.*;

(11) Coastal Zone Management Act of 1972, Pub. L. 92–583, as amended, 16 U.S.C. § 1451 *et seq.*;

(12) Flood Disaster Protection Act of 1973, Pub. L. 93–234, as amended, 42 U.S.C. § 4002 *et seq.*;

(13) Safe Drinking Water Act of 1974, Pub. L. 92–523, as amended, 42 U.S.C. § 300f–j26;

(14) Wild and Scenic Rivers Act, Pub. L. 90–542, as amended, 16 U.S.C. § 1271 *et seq.*;

(15) Environmental Justice in Minority Populations and Low-Income Populations Executive Order 12898 (February 11, 1994);

(16) Farmland Protection Policy Act, Pub. L. 97–98, as amended, 7 U.S.C. § 4201 *et seq.*; and

(17) Other Federal Environmental Statutes and Executive Orders as applicable.

§ 316.2 Excess capacity.

(a) *Definitions.* For purposes of this section only the following definitions apply:

Beneficiary means a firm or group of firms, a public or private enterprise or organization that provides a commercial product or service and that directly benefits from an EDA-assisted project.

Capacity means the maximum amount of a product or service that can be supplied to the market area over a sustained period by existing enterprises through the use of present facilities and customary work schedules for the industry.

Commercial product or service means a product or service sold on the open market in competition with another provider's product or service of the same kind.

Demand means the actual quantity of a commercial product or service that users are willing to purchase in the market area served by the intended beneficiary of the EDA assisted project.

Efficient capacity means that part of capacity derived from the use of contemporary structures, machinery and equipment, designs, and technologies.

Existing competitive enterprise means an established operation which either produces or delivers the same kind of commercial product or service to all or a substantial part of the market area served by the intended beneficiary of the EDA assisted project.

Firm means any enterprise which produces or sells a commercial product or service.

Market Area means the geographic area within which commercial products or services compete for purchase by customers.

Product or service means a good, material, or commodity, or the availability of a service or facility.

Section 208 means section 208 of PWEDA.

(1) A section 208 study is a detailed economic analysis/evaluation of competitive impact.

(2) A section 208 report is a summary of supply/demand factors.

(3) A section 208 exemption may apply to a project having one or more of the characteristics listed in paragraph (e) of this section.

(b) Under section 208:

(1) No financial assistance under PWEDA shall be extended to any

project when the result would be to increase the production of products or services when there is not sufficient demand for such products or services, to employ the efficient capacity of existing competitive commercial or industrial enterprises; and

(2) When EDA considers extending assistance for a project that benefits a firm or industry that provides a commercial product or service, the beneficiary is subject to a 208 report, study, or exemption, resulting in a finding that the project will or will not violate section 208. A section 208 study or report is required, except as provided in paragraph (e) of this section.

(c) The following procedures shall be followed to the extent necessary to provide EDA with sufficient information to prepare a 208 study or report:

(1) The beneficiary shall submit, as early as possible, the following information with regard to each commercial product or service affected by the project:

(i) A detailed description of the commercial product or service;

(ii) Current and projected amount and value of annual sales or receipts;

(iii) Market area; and

(iv) Name of other suppliers and amount of commercial product or service presently available in the market area.

(2) If the beneficiary has conducted or commissioned a relevant market study, it shall be made available to EDA as early as possible, for possible use by EDA in the 208 study or report.

(d) A section 208 report will form an acceptable basis on which to make a section 208 compliance finding when the beneficiary's projected new or additional annual output is less than one percent of the last recorded annual output in the market area, or when it is otherwise apparent that a 208 study is not required to determine that the project will not violate section 208.

(e) Unless EDA determines that circumstances require a section 208 study or report, EDA will make a finding of compliance with section 208 without doing a section 208 report or study for those projects with known beneficiaries, and which have one or more of the following characteristics:

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(1) The project is primarily for the use and benefit of the community as a whole without significantly expanding the output of commercial products or services;

(2) The project is primarily to be used for non-production or non-distribution purposes;

(3) The project will replace or restore capacity recently destroyed by flood, fire, wind, or other natural disaster, without contributing to significant expansion of the previously existing supply of the same kinds of commercial products or services;

(4) The project will assure the retention of physical capacity and/or employment without significantly expanding the existing supply of the same kinds of commercial products or services;

(5) The project will assure the reopening of facilities closed within two years of the date of reopening, if the facility will provide the same kinds of products or services as previously provided, without a significant increase in output;

(6) The project will replace, rebuild or modernize, within the same commuting area, facilities which within the previous two years have been, or are to be, displaced by official governmental action, without a change in the kind or significant increase in output of the commercial product or service previously provided;

(7) The project assures completion of a project previously assisted by EDA, where further funding is required because of revised project cost estimates, rather than for additional productive capacity;

(8) The project is wholly or primarily for planning, technical assistance, research, evaluation, other studies, or for the training of workers, and not for the direct benefit of a firm or an industry that produces a commercial product or service; or

(9) No firm benefitted by the project will use 50 percent or more of any EDA-financed service or facility.

[64 FR 5482, Feb. 3, 1999, as amended at 64 FR 69879, Dec. 14, 1999]

§316.3 Nonrelocation.

(a) General requirements for non-relocation for funding under PWEDA are as follows:

(1) EDA financial assistance will not be used to assist employers who transfer jobs from one commuting area to another. A commuting area ("area") is that area defined by the distance people travel to work in the locality of the project receiving EDA financial assistance;

(2) Every applicant for EDA financial assistance has an affirmative duty to inform EDA of any employer who will benefit from such assistance who will transfer jobs (not persons) in connection with the EDA grant;

(3) EDA will determine compliance with this requirement prior to grant award based upon information provided by the applicant during the project selection process; and

(4) Each applicant and identified primary beneficiary of EDA assistance, which for purposes of this section means an entity providing economic justification for the project, must submit its certification of compliance with this section, and other applicable information as determined by EDA.

(b) The nonrelocation requirements stated in paragraph (a) of this section shall not apply to businesses which:

(1) Relocated to the area prior to the date of the applicant's request for EDA assistance;

(2) Have moved or will move into the area primarily for reasons which have no connection to the EDA assistance;

(3) Will expand employment in the area where the project is to be located substantially beyond employment in the area in which the business had originally been located;

(4) Are relocating from technologically obsolete facilities to be competitive;

(5) Are expanding into the new area by adding a branch, affiliate, or subsidiary while maintaining employment levels in the old area or areas; or

(6) Are determined by EDA to be exempt.

§316.4 Procedures in Disaster Areas.

When non-statutory EDA administrative or procedural conditions for financial assistance awards cannot be met

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by applicants under PWEDA as the result of a disaster, EDA may waive such conditions.

§ 316.5 Project servicing for loans and loan guarantees.

EDA will provide project servicing to borrowers and lenders who received EDA loans and/or guaranteed loans under any programs administered by EDA. This includes but is not limited to loans under PWEDA prior to the effective date of Public Law 105-393, the Trade Act and the Community Emergency Drought Relief Act of 1977.

(a) EDA will continue to monitor such loans and guarantees in accordance with the loan or guarantee program.

(b) Borrowers/lenders shall submit to EDA any requests for modifications of their agreements with EDA. EDA shall, in accordance with applicable laws and policies, including the Federal Credit Reform Act of 1990 (2 U.S.C. 661c(e)), consider and respond to such modification requests.

(c) In the event that EDA determines it necessary or desirable to take actions to protect or further the interests of EDA in connection with loans or guarantees made or evidences of indebtedness purchased, EDA may:

(1) Assign or sell at public or private sale, or otherwise dispose of for cash or credit, in its discretion and upon such terms and conditions as it shall determine to be reasonable, any evidence of debt, contract, claim, personal or real property, or security assigned to or held by it in connection with financial assistance extended;

(2) Collect or compromise all obligations assigned to or held by it in connection with EDA financial assistance projects until such time as such obligations may be referred to the Attorney General for suit or collection; and

(3) Take any and all other actions determined by it to be necessary or desirable in purchasing, servicing, compromising, modifying, liquidating, or otherwise administratively dealing with or realizing on loans or guaranties made or evidences of indebtedness purchased.

§ 316.6 Public information.

The rules and procedures regarding public access to the records of the Eco-

nomie Development Administration are found at 15 CFR part 4.

§ 316.7 Relocation assistance and land acquisition policies.

Recipients of EDA financial assistance under PWEDA and the Trade Act (States and political subdivisions of States and non-profits as applicable) are subject to requirements set forth at 15 CFR part 11.

§ 316.8 Additional requirements; Federal policies and procedures.

Recipients, as defined under § 314.2 of this chapter, are subject to all Federal laws and to Federal, Department of Commerce, and EDA policies, regulations, and procedures applicable to Federal financial assistance awards, including 15 CFR part 24, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, or 15 CFR part 14, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Other Non-Profit and Commercial Organizations, whichever is applicable.

§ 316.9 Amendments and changes.

(a) Requests by recipients for amendments to a grant shall be submitted in writing to EDA for approval, and shall contain such information and documentation necessary to justify the request.

(b) Any changes made without approval by EDA are made at grantee's own risk of suspension or termination of the project.

(c) Changes of project scope after the time the project grant funds could be obligated will not be approved by EDA. In most cases, project grant funds cannot be obligated after September 30 of the fiscal year the grant is awarded.

§ 316.10 Preapproval award costs.

Project activities carried out before approval of an application by EDA are carried out at the sole risk of the applicant. Such activity could result in rejection of such project application, the disallowance of costs, or other adverse consequences as a result of non-compliance with Federal requirements, including, but not limited to, civil rights requirements, Federal labor standards,

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or Federal environmental, historic preservation or related requirements.

§ 316.11 Intergovernmental review of projects.

(a) When the applicant is not a State, Indian tribe or other general-purpose governmental authority, the applicant must afford the appropriate general purpose local governmental authority of the area a minimum of 15 days in which to review and comment on a proposed project under EDA's public works and economic adjustment programs. Under these programs, applicants shall furnish the following with their application: if no comments were received, a statement of the efforts made to obtain such comments; or, if comments were received, a copy of the comments and a statement of any actions taken to address such comments.

(b) Applicants as appropriate, must also give State and local governments a reasonable opportunity to review and comment on the proposed project if the State has a Single Point of Contact review process, including comments from areawide planning organizations in metropolitan areas as provided for in 15 CFR part 13.

[64 FR 5482, Feb. 3, 1999, as amended at 64 FR 69879, Dec. 14, 1999]

§ 316.12 Fees for paying attorneys and consultants.

Grant funds must not be used directly or indirectly to pay for attorney's or consultant's fees in connection with obtaining grants and contracts for projects funded under PWEDA.

§ 316.13 Economic development information clearinghouse.

EDA will provide assistance and information as follows:

(a) Maintain a central information clearinghouse on matters relating to economic development, economic adjustment, disaster recovery, defense conversion, and trade adjustment programs and activities of the Federal and State governments, including political subdivisions of States;

(b) Assist potential and actual applicants for economic development, economic adjustment, disaster recovery, defense conversion, and trade adjustment assistance under Federal, State,

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and local laws in locating and applying for the assistance; and

(c) Assist areas described in § 301.2(b) and other areas by providing to interested persons, communities, industries, and businesses in the areas any technical information, market research, or other forms of assistance, information, or advice that would be useful in alleviating or preventing conditions of excessive unemployment or underemployment in the areas.

§ 316.14 Project administration, operation, and maintenance.

EDA shall approve Federal assistance under PWEDA only if satisfied that the project for which Federal assistance is granted will be properly and efficiently administered, operated, and maintained.

§ 316.15 Maintenance of standards.

In accordance with sec. 602 of PWEDA all laborers and mechanics employed by contractors or subcontractors on public projects assisted by EDA under PWEDA shall be paid in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5).

§ 316.16 Records and audits.

(a) Each recipient of Federal assistance under PWEDA shall keep such records as the Secretary shall require, including records that fully disclose—

(1) The amount and the disposition by the recipient of the proceeds of the assistance;

(2) The total cost of the project in connection with which the assistance is given or used;

(3) The amount and nature of the portion of the cost of the project provided by other sources; and

(4) Such other records as will facilitate an effective audit.

(b) Access to books for examination and audit—The Secretary, the Inspector General of the Department, and the Comptroller General of the United States, or any duly authorized representative, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that relate to assistance received under PWEDA.

§ 316.17 Acceptance of certifications by applicants.

EDA will accept an applicant's certifications, accompanied by evidence satisfactory to EDA, that the applicant meets the requirements of PWEDA. Each applicant must include in such evidence satisfactory information that any non-Federal funds (or eligible Federal funds) required to match the EDA share of project costs are committed to the project and will be available as needed.

§ 316.18 Reports by recipients.

(a) In general, each recipient of assistance under PWEDA must submit reports to EDA at such intervals and in such manner as EDA shall require, except that no report shall be required to be submitted more than 10 years after the date of closeout of the assistance award.

(b) Each report must contain an evaluation of the effectiveness of the economic assistance provided in meeting the need that the assistance was designed to address and in meeting the objectives of PWEDA.

§ 316.19 Project administration by District organization.

When an Economic Development District is not a recipient or co-recipient of an award for a project involving construction, the District organization may administer the project for such recipient if the following conditions are met, as determined by EDA:

(a) The recipient has requested (either in the application or by separate written request) that the district organization for the area in which the project is located perform the project administration;

(b) The recipient certifies and EDA finds that:

(1) Administration of the project is beyond the capacity of the recipient's current staff to perform and would require hiring additional staff or contracting for such services,

(2) No local organization/business exists that would be able to administer the project in a more efficient or cost-effective manner than the staff of the district, and

(3) The staff of the district would administer the project themselves, without subcontracting the work out;

(c) EDA approves the request either by approving the application in which the request is made, or by separate specific written approval; and

(d) The allowable costs for the administration of the project by the district organization staff will not exceed the customary and reasonable amount that would be allowable if the district were the recipient.

PART 317—CIVIL RIGHTS

AUTHORITY: 42 U.S.C. 3211; 42 U.S.C. 2000d-1; 29 U.S.C. 794; 42 U.S.C. 3123; 42 U.S.C. 6709; 20 U.S.C. 1681; 42 U.S.C. 6101; Department of Commerce Organization Order 10-4.

SOURCE: 64 FR 5485, Feb. 3, 1999, unless otherwise noted.

§ 317.1 Civil rights.

(a) Discrimination is prohibited in programs receiving federal financial assistance from EDA in accordance with the following authorities:

(1) Section 601 of Title VI of the Civil Rights Act of 1964, codified at 42 U.S.C. 2000d *et seq.* (proscribing discrimination on the basis of race, color, or national origin), and the Department of Commerce's implementing regulations found at 15 CFR part 8;

(2) 42 U.S.C. 3123 (proscribing discrimination on the basis of sex);

(3) 29 U.S.C. 794, as amended, and the Department of Commerce's implementing regulations found at 15 CFR part 8b (proscribing discrimination on the basis of disabilities);

(4) 42 U.S.C. 6101, as amended, and the Department of Commerce's implementing regulations found at 15 CFR part 20; and

(5) 42 U.S.C. 6709 (proscribing discrimination on the basis of sex under the Local Public Works Program; and

(6) Other Federal statutes, regulations and Executive Orders as applicable.

(b) No recipient or other party shall intimidate, threaten, coerce, or discriminate against, any person for the purpose of interfering with any right or privilege secured by section 601 of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, Title IX

of the Education Amendments of 1972, 42 U.S.C. 3123, 42 U.S.C. 6709, and the Age Discrimination Act of 1975, or because the person has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part.

(c) Definitions: (1) *Other Parties* means, as an elaboration of the definition in 15 CFR part 8, entities which, or which are intended to, create and/or save 15 or more permanent jobs as a result of EDA assistance provided that they are also either specifically named in the application as benefitting from the project, or are or will be located in an EDA building, port, facility, or industrial, commercial or business park prior to EDA's final disbursement of funds awarded for the project.

(2) Additional definitions are provided in EDA's Civil Rights Guidelines and 15 CFR part 8.

(d) All recipients of EDA financial assistance under PWEDA and the Trade Act, and Other Parties are required to submit the following to EDA:

(1) Written assurances that they will comply with EDA regulations and other Department of Commerce regulations, and such other requirements as may be applicable, prohibiting discrimination;

(2) Employment data in such form and manner as determined by EDA;

(3) Information on civil rights status and involvement in charges of discrimination in employment or the provision of services during the 2 years previous to the date of submission of such data as follows:

(i) Description of the status of any lawsuits, complaints or the results of compliance reviews; and

(ii) Statement indicating any administrative findings by a Federal or State agency.

(4) Whenever deemed necessary by EDA to determine that applicants and other parties are in compliance with civil rights regulations, such applicants and other parties shall submit additional information in the form and manner requested by EDA; and

(5) In addition to employment record requirements found in 15 CFR 8.7, complete records on all employees and applicants for employment, including information on race, sex, national origin,

age, education and job-related criteria must be retained by employers and made accessible to the responsible Department official.

(e) To enable EDA to determine that there is no discrimination in the distribution of benefits in projects which provide service benefits, EDA may require that applicants submit a project service map and information on which to determine that services are provided to all segments of the area being assisted. Applicants may be required to submit any other information EDA may deem necessary for such determination.

(f) EDA assisted planning organizations must meet the following requirements:

(1) For the selection of representatives, EDA expects planning organizations and CEDS committees to take appropriate steps to ensure, where appropriate to the area, that there is adequate representation of minority and low-income populations, women, people with disabilities and Federal and State recognized American Indian tribes and that such representation is accomplished in a nondiscriminatory manner; and

(2) EDA assisted planning organizations and CEDS committees shall take appropriate steps to ensure that no individual will be subject to discrimination in employment because of their race, color, national origin, sex, age or disability.

(3) Prior to approval of EDA initial funding, and for district designations, each district and other planning organizations so supported by EDA is required to report to EDA the membership of its governing bodies, executive committees, and staff. This report shall include the following items:

(i) The total population and minority population of the area served by the organization;

(ii) A list of organizations in the area representing the interests of minorities, women, and people with disabilities;

(iii) A list of the membership of the governing board, executive committee indicating race, sex, national origin, age, and those who self-identify, as having disabilities;

(iv) A description of actions taken and methods used in its diversity efforts to promote, as much as possible, the participation of all segments of the areas served;

(v) Information regarding how they notified and provided organizations, including neighborhood associations representing the interests of minorities, women, and people with disabilities, the opportunity to select members and their own representatives;

(vi) A list of employees on the staff of the organization by name, position title, salary, funding source, and hiring data indicating race, sex, national origin, and age;

(vii) A brief summary of any economic development activities undertaken during the previous 12 months that may have impacted the covered persons in the area. This information is required with the initial application and annually thereafter for continuation planning funding.

(4) Prior to approval of continuation funding for a planning grant each district and other planning organization so supported by EDA is required to submit a report which includes the items outlined in paragraph (f)(3) of this section except items in paragraphs (f)(3)(ii) and (v), (although paragraph (f)(3)(v) may be required when changes to the boards and committees affecting minorities, women, people with disabilities have occurred), and a summary indicating the annual progress made in the diversity efforts including a list by name, race, national origin, sex, and age of all hires, promotions, terminations, and composition of applicant pools since the last reporting period and steps taken to ensure non-discrimination and to provide equal employment opportunity.

(5) In order to determine whether districts and other planning organizations supported by EDA are complying with the requirements in paragraph (f)(3), EDA shall conduct annual compliance reviews of these organizations through either an in-depth desk audit or onsite review.

(g) Applicants for Revolving Loan Funds will provide information describing the make-up of the existing or proposed RLF Loan Board members by race, national origin, gender, age, and

those who voluntarily self-identify as having disabilities. The reports submitted to EDA by RLF grantees will be used to monitor civil rights compliance. Additional information may be requested as needed to determine compliance. Compliance issues which will be reviewed and monitored include, but are not limited to, the following:

(1) The representation of minorities, women, and those who voluntarily self-identify as having disabilities, as well as the age of members on the RLF Loan Board;

(2) Recipient's plans to openly market the RLF to prospective minority, disabled, and women business borrowers; and

(3) Recipient's monitoring plans for borrowers' compliance with civil rights requirements concerning employees or applicants for employment, and/or providers of goods and services.

(h) Reporting and other procedural matters are set forth in 15 CFR parts 8, 8b, 8c, and 20 and the Civil Rights Guidelines which are available from EDA's Regional Offices. See part 300 of this chapter.

[64 FR 5485, Feb. 3, 1999, as amended at 64 FR 69880, Dec. 14, 1999]

PART 318—EVALUATIONS OF UNIVERSITY CENTERS AND ECONOMIC DEVELOPMENT DISTRICTS

Sec.

318.1 University Center performance evaluations.

318.2 Economic Development District performance evaluations.

AUTHORITY: 42 U.S.C. 3211; Department of Commerce Organization Order 10-4.

SOURCE: 64 FR 5486, Feb. 3, 1999, unless otherwise noted.

§ 318.1 University Center performance evaluations.

(a) EDA will evaluate the performance of each University Center. EDA will:

(1) Evaluate each University Center at least once every three years;

(2) Assess the University Center's contribution to providing technical assistance, conducting applied research, and disseminating project results, in accordance with the scope(s) of work

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funded during the evaluation period; and

(3) For peer review, ensure the participation of at least one other University Center, as appropriate, in the evaluation on a cost-reimbursement basis.

(b) A purpose of the evaluation is to determine if the University Center should continue to receive funding under the program.

[64 FR 5486, Feb. 3, 1999, as amended at 64 FR 69881, Dec. 14, 1999]

§ 318.2 Economic Development District performance evaluations.

EDA will evaluate the performance of each Economic Development District. EDA will:

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(a) Evaluate each Economic Development District at least once every three years;

(b) Assess the Economic Development District's management standards, financial accountability, and program performance; and

(c) For peer review, ensure the participation of at least one other Economic Development District organization, as appropriate, in the evaluation on a cost-reimbursement basis.

[64 FR 5486, Feb. 3, 1999, as amended at 64 FR 69881, Dec. 14, 1999]